

ZONING BOARD OF APPEALS

April 17, 2006

Town Hall
Court Room
7:00 P.M.

At a regular meeting of the Town of Big Flats Zoning Board of Appeals of the Town of Big Flats, Chemung County, held at the Big Flats Town Municipal Hall Offices in said Town of Big Flats on the 17th day of April 2006, at 7:00 prevailing time. The meeting was called to order by Thomas Rhodes, Chairperson and upon roll being called, the following were:

PRESENT: Thomas Rhodes, Chairperson
Dick Seeley
Joe Rowe
Harry King

ABSENT: Don Williams

STAFF: Maureen Harding, Director of Planning

GUEST: Bradley Clark, Art Ambrose, Debbie Cloburn

COBURN AREA VARIANCE

TAX PARCELS #48.03-2-15.1

Chairman Rhodes read the Public Hearing Notice. He asked Maureen Harding, Director of Planning to update the Board on the background of the application. Harding explained that the applicant has requested a 12-foot x 22-foot covered porch to be added to the rear of her home. However, the Town Municipal Code's general requirements governing senior housing PMRD Section 17.20.080(A)(5d) states that covered porches may project a maximum of six feet into the required yard setbacks and shall not exceed one hundred (140) square feet of structure area within the required yard. However, the Planning Board at their April 4, 2006 meeting recommended that the Zoning Board of Appeals consider approval with modifications and the total projection into the rear yard be limited to 8 feet at a 140 square foot maximum structure.

Rhodes asked the applicant Debbie Coburn if she was aware of the Planning Board's recommendation. Coburn replied that she was not present at the meeting, but that in her neighborhood there are bigger decks. Harding explained that it is her understanding that these porches may have been constructed prior to the present administration and that those constructed without the Code Enforcement's knowledge were in violation of the Town Municipal Code.

Seeley asked the Zoning Board of Appeals secretary if there have been any responses from the adjoining neighbors pursuant to our notification. She replied that no responses have been received.

PUBLIC HEARING

COBURN AREA VARIANCE

TAX PARCELS #48.03-2-15.1

Chair Rhodes called the Public Hearing to order at 7:05 P.M. He noted that the Public Hearing was duly published in the Elmira Star-Gazette and went on to describe the location, features, and purpose of this proposed variance. He further stated that the purpose of the Public Hearing was to receive public

comments on the application that is the subject of this Public Hearing. Rhodes asked for comments from those present who wished to speak:

IN FAVOR: Debbie Coburn, the applicant commented that she was told by the owner of the park that a 6-foot x 22-foot porch would be like a hallway and considering that there are larger porches than 6-feet x 22-feet already there, she saw no reason why she could not have the same.

AGAINST: None

COMMENTS: None

Rhodes closed the Public Hearing at 7:12 P.M to reconvene the business portion of the regular meeting.

COBURN AREA VARIANCE TAX PARCELS #48.03-2-15.1

Rhodes described and reviewed the proposed resolution and the recommendations proposed by the Planning Board. Rowe asked that the resolution be opened for discussion before adopting the resolution. Rowe stated that he understood that the house is already into the setback; therefore, any addition to the home is already encroaching into the rear yard.

Rhodes explained that the Town had modified the zoning ordinance for that particular development saying that an attached porch or deck could extend no more than six feet into the required setback as long as it did not exceed 140 square feet in total area.

Rowe stated that in addition to the Town previously addressing and providing a provision allowing a six feet maximum encroachment into setback for that area, he has some additional concerns:

- (1) Would this set precedence?
- (2) How would this affect similar future requests?
- (3) If this were approved, would this approval fall under that covenant?
- (4) Should that provision for that district be overturned and regress back to determining these request on an individual basis?
- (5) This ordinance was developed in consideration of the fact that there is not much room on those lots. Should the surrounding homes be granted the same approval?

Rhodes concurred and added that it is his understanding, that unless there are some extenuating circumstances where this would be a unique or individual situation that one would be opposed to granting any extension to the six feet already allowed in the ordinance.

The applicant, Debbie Coburn asked the Board if it would make a difference if she did not attach the porch to the house or consider it an addition like other people have in the development. Would this consideration allow her to have the same? Harding restated that any accessory structures constructed without the knowledge of the Town were in violation. There is nothing I can do about what was done without the knowledge of the Town or before the present Code Enforcement Officers. We now go according to the Zoning Code and you must comply with that code. It is your case before the Board now. Coburn stated that in other words what you are saying that I have to have 6 feet by 22 feet porch.

Rhodes asked what the provision was for accessory building. Harding replied that she does not believe that in Retirement Estates there is a provision for accessory buildings, and that she would have to look it up. Rhodes commented that there are accessory buildings already there.

Harding read the code, stating that the applicant can have an accessory building including an attached garage that shall be no more than 200 square feet and shall be located no less than 10 feet from any rear or side lot line and shall not be located in the front yard setback and be at least 12 feet from the principal building. Rhodes concluded that due to the constraints of the lot, to construct an accessory structure and still comply with the Zoning Code would not be possible.

There being no further questions or comments, Rhodes asked for a motion to adopt the resolution.

**RESOLUTION ZBA 1-2006
DECISION ON COBURN AREA VARIANCE
TAX PARCEL #48.03-2-15.1**

The following resolution was offered by Board Member Seeley, who moved its adoption, and seconded by Board Member Rowe, to wit:

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from Debbie Coburn for a variance of Chapter 17.20.080 A. (5d) of the Town Municipal Zoning Law of Big Flats to permit the construction of 12' X 22' (264 feet) addition to the rear of her manufactured home;

AND WHEREAS, the property is located at 225 Leisure Lane in the Senior Housing Planned Multiple Residential District (SHMRD), namely Retirement Estates;

AND WHEREAS, Chapter 17.20.080 A. (5d) of the Town Municipal Zoning Law gives exception to awnings, canopies, single story decks and porches to be constructed into a required yard setback a maximum of six feet, with the total area of the structure not to exceed 140 square feet;

AND WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to NYSCRR 617.5, and thereby requires no further action under SEQRA; and

AND WHEREAS, the adjoining property owners have been notified of this application pursuant to the rules of the Planning Board;

AND WHEREAS, pursuant to Chapter 17.60.070 of the Town Municipal Code, the Planning Board of the Town of Big Flats, at its March 14, 2006 meeting, made the following recommendation to the Zoning Board of Appeals that it does not support the construction of the structure as proposed, and recommends that the Zoning Board of Appeals consider approval with modification as follows:

- That the structure be restricted to the maximum structure area provided for in the code, being 140 square feet, and
- That the total projection into the rear yard be limited to 8 feet;

AND WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat;

AND WHEREAS, after review, the Zoning Board has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

A. The requested variance will create an undesirable change in the character of the neighborhood or detriment to nearby properties in that the applicant is requesting a 12' X 22' covered porch that is not consistent with the character of the neighborhood;

B. The benefits sought by the applicant cannot be achieved by some other feasible method because even though the applicant could construct an accessory structure or an detached garage no greater than 200

square feet, the code does not allow an accessory structure to be located greater than 10 feet from any rear or side lot line and must be 12 feet from the principal building. Therefore, due to the constraints of the existing lot, an accessory structure is not possible to gain the same benefit nor is there any other option available to the applicant under the Zoning Law;

C. The requested variance is substantial in that on a percentage basis, the request exceeds what is allowable. The Zoning Law had already been amended to give Senior Housing Planned Multiple Residential District residents within Retirement Estates an allowance for a six-foot encroachment on the setback requirements pursuant to Chapter 17.20.080 A. (5d) of the Town Municipal Zoning Law. Therefore, the applicant's request would in fact establish yet, a new precedent;

D. The proposed variance will not have an adverse effect or impact on the physical and environmental conditions of the neighborhood or district; and

E. The alleged difficulty is self-created because the applicant had prior knowledge of Chapter 17.20.080 A. (5d) of the Town Municipal Zoning Law when applying for the building permit.

NOW, THEREFORE, BE IT RESOLVED that the application for approval of a variance of Chapter 17.20.080 A. (5d) of the Zoning Law of the Town of Big Flats is hereby denied for the reasons stated above.

The question of the forgoing resolution was duly put to a vote as follows:

CARRIED:	AYES:	Rhodes, Rowe, King
	NAYS:	Seeley
	ABSENT:	Williams

Dated: Monday, April 17, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

**CLARK'S BIG FLATS COMMUNITY BUSINESS CENTER
AREA VARIANCE FOR SITE PLAN
TAX PARCELS #66.04-4-12.1**

Chairman Rhodes asked the Director of Planning, Maureen Harding, to describe the reasons for this area variance request. Harding, using the map of lands of Hungerford Corporation, pointed out that the application addressing the Hungerford building is located on 84 Main Street in the hamlet adjacent to the Town Park. The existing structure use was discontinued approximately four years ago. Harding listed the area variances required in order for anyone to reuse the building.

Rhodes commented that in order to conform to the ordinance the existing building would have to be set back 75 feet from the road and 65 feet from the side yard. Harding added that the metal storage building would also require a 25-foot front yard setback as well as a 25-foot transitional yard or buffer yard. Said building is 42.92 feet from the front lot line. The applicant plans to store a bucket truck in the building. A total of 8 area variances are required.

Rhodes commented that the building as it stands now is a non-conforming building grandfathered in under the Town Municipal Code, but in order to use the building it must meet the criteria. However, if these variances are not granted, the Town could do nothing with the non-conforming building until such a time it becomes unsafe and has to be torn down. It was noted that the side yard dimension of the Principal Structure was approximately 12 feet.

Bradley Clark, the applicant asked about the right-of-way. Harding replied that it is a road right-of-way. Rhodes asked if the right-of-way had been turned over to the Town. Harding replied that the survey when submitted to the Town would verify ownership. So far, the trolley company has not been contacted; however, it is felt that it has reverted to the Town.

Seeley commented that the original owners used the River Road access for deliveries. Harding replied that it is her understanding that the Hungerford property has an easement off River Road that is part of Town property. Art Ambrose, Realtor representing the applicant, commented that the Town apparently took the property for the parkland through eminent domain but gave an easement to the owners of Hungerford to allow access over that road for accessing the back of the building.

Seeley asked what plans the applicant proposes for delivery. Ambrose, in conjunction with the applicant, replied that it is the intent to have the delivery trucks enter from River Street and not from Main Street through the Hamlet.

King asked the applicant where the parking would be located. Clark replied that he proposes to redo the parking lot for twenty spaces to the side of the main building. The ultimate goal is to achieve a dual-purpose parking lot for the proposed business during the day and Town Park visitors at night. The liability would have to be reviewed.

Seeley asked Harding if the property is zoned correctly for the proposed use. Harding replied that it is a permitted use and that it would be low impact and compatible to the surrounding residences.

King asked how many businesses are proposed for the building. Clark replied that 1,500 square foot of the front of the building would be for rental offices in the future and that the remainder would include three of the family owned businesses and storage. King, referring to an article in the local paper, asked Clark how many people he would expect to employ for all the businesses. Clark replied at least 32 people. However, not all of the personnel are going to be on site.

Rhodes asked Harding that if all variances were granted, would this building then become a conforming building. Harding replied no, it would still be a non-conforming building with variances. Variances are carried with the land. Rhodes added that if it is a non-conforming building it could not be expanded.

PUBLIC HEARING
CLARK'S BIG FLATS COMMUNITY BUSINESS CENTER
AREA VARIANCE FOR SITE PLAN
TAX PARCELS #66.04-4-12.1

Chair Rhodes called the Public Hearing to order at 7:30 P.M. He noted that the Public Hearing was duly published in the Elmira Star-Gazette and went on to describe the location, features, and purpose of this proposed variance. He further stated that the purpose of the Public Hearing was to receive public comments on the application that is the subject of this Public Hearing. Rhodes asked for comments from those present who wished to speak:

IN FAVOR: Bradley Clark described that he proposes to house the following family owned Businesses and related storage, and remodel the front portion of the building for rental office space:

- BC Heating, Plumbing and Air Conditioning,
- BC Service Management (bookkeeping company),
- Clark Electric and Telecommunications and
- BC Electric Incorporated

AGAINST: None

COMMENTS: None

Rhodes closed the Public Hearing at 7:50 P.M to reconvene the business portion of the regular meeting.

**CLARK'S BIG FLATS COMMUNITY BUSINESS CENTER
AREA VARIANCE FOR SITE PLAN
TAX PARCELS #66.04-4-12.1**

Rowe inquired as to the nine variances versus the six that are contained in the proposed resolution. Harding replied that the two additional variances pertain to the accessory building. The building itself encroaches slightly within the transition and the buffer yard. Harding raised the point that the Buffer and Barrier requirements enacted in 2002 are for suburban development. This does not conform to the traditional layout of this hamlet. She expects there will be several businesses needing the same requirement changes, which are being addressed in the new zoning plan.

Rhodes asked if the park is zoned the same. Harding replied that she believes that the park is also zoned Business Neighborhood. Rhodes commented that on the setback, the backside would only have to be 15 feet because you would not need a buffer or transition zone. Harding replied that being a recreational use the same rule might not apply.

Rowe commented that when he visited the site he was concerned with the potential businesses and visitors to the park:

- Did we look to see what the requirements are for parking, entering and leaving the building?
- The deliveries, etc. are being directed through the entrance close to the park. He noted there is an entrance/exit on Main Street, but that the proposed traffic pattern is to use the easement road adjacent to the park. Harding replied that the intent is to eliminate truck traffic on County Route 64.

Seeley commented that the adjoining business allows street parking that poses some safety concerns. Harding replied that it was being reviewed through the Town Center Committee; however, being a County Road we need to work with the County to correct some of these problems.

Rhodes agreed that the two variances for the accessory building be added and noted that these variances were not included in the Planning Board's recommendation.

There being no further questions or comments, Rhodes asked for a motion to adopt the resolution.

**RESOLUTION ZBA 2-2006
DECISION ON CLARK'S BIG FLATS COMMUNITY BUSINESS CENTER AREA VARIANCE
TAX PARCEL #66.04-4-12.1**

The following resolution was offered by Board Member Seeley, who moved its adoption, and seconded by Board Member King, to wit:

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from Bradley R. Clark for variances of Chapter 17.16.020 of the Town Municipal Zoning Law of the Big Flats to permit reuse of that building formerly known as the Hungerford Building for an office and storage use on tax parcel #66.04-4-12.1 as shown on a drawing received March 13, 2006;

AND WHEREAS, the property is located at 84 Main Street in the Business Neighborhood (BN) district and is owned by the Hungerford Corporation;

AND WHEREAS, the existing principle building is constructed within the required front yard and side yard setback, and does not comply with Chapters 17.16.020 and 17.36.200 of the Town Municipal Code, and the following variances will be required:

- Required 15' side yard setback on the eastern boundary pursuant to 17.16.020,
- Required 25' transition yard on the eastern boundary pursuant to 17.36.200 (C1),
- Required 25' buffer yard on the eastern boundary pursuant to 17.36.200 (D1, footnote 3),
- Required 25' front yard setback on the northern boundary pursuant to 17.16.020,
- Required 25' transition yard on the northern boundary pursuant to 17.36.200 (C2),
- Required 25' buffer yard on the northern boundary pursuant to 17.36.200 (D1, footnote 3);
- Required 25' transition yard setback on the western boundary pursuant to 17.16.020,
- Required 25' buffer yard on the western boundary pursuant to 17.36.200 (C1),

AND WHEREAS, the adjacent property owners have been notified of this application pursuant to the Rules of the Planning Board;

AND WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to NYCRR 617.5, and thereby requires no further action under SEQR:

AND WHEREAS, the Planning Board, at its April 4, 2006 meeting, determined that based on its findings the Board finds that there is no feasible way to make the existing building comply with the current code requirements, that failure to grant the variances will render the building unusable, and thereby recommends that the Zoning Board of Appeals grant the required variances;

AND WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat;

AND WHEREAS, after review, the Zoning Board has weighed the effects of the requested variances on the health, safety, and welfare of the neighborhood and community, and made the following findings:

A. The requested variance will not create an undesirable change in the character of the neighborhood or detriment to nearby properties since the lot and building are pre-existing and the applicant plans to enhance the building thereby improving the character of the neighborhood;

B. The benefits sought by the applicant cannot be achieved by some other feasible method because the applicant would need to partially or wholly demolish the building(s) in order to comply with the Town Municipal Code. Therefore, due to the constraints of the existing lot and pre-existing structures, there are no other options available to the applicant under the Zoning Law;

C. The requested variances are substantial.

D. The proposed variance will not have an adverse effect or impact on the physical and environmental conditions of the neighborhood or district due to its pre-existence and re-use is preferred over abandonment; and

E. The alleged difficulty is self-created because the applicant had prior knowledge of Chapter 17.16.020 and 17.36.200 of the Town Municipal Zoning Law when applying for site plan review.

NOW, THEREFORE, BE IT RESOLVED that the application for approval of a variance of Chapters 17.16.020 and 17.36.200 of the Town Municipal Zoning Law of the Town of Big Flats is hereby granted for the reasons stated above.

The question of the forgoing resolution was duly put to a vote as follows:

CARRIED:	AYES:	Seeley, Rhodes, Rowe, King
	NAYS:	None
	ABSTAIN	
	ABSENT:	Williams

Dated: Monday, April 17, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

MINUTES:

Chairman Rhodes asked if there were any corrections before accepting and approving the minutes of October 3, 2005. There being none, Rowe made a motion to accept and approve the minutes of October 3, 2005, seconded by King. Seeley abstained, Williams was absent. Rhodes, Rowe and King were in favor, motion carried.

MEMBERS COMMENTS:

- Rhodes asked Harding for an update concerning the Zoning Board of Appeals Rules and Regulations procedure modifications. Harding explained that the Town Board has not adopted them at this time and reminded the Board to submit any comments to her.
- The Board discussed a tentative meeting schedule for new variances to be reviewed by the Planning Board on April 25, 2006. Those present agreed that May 15, 2006 might work at this time. The secretary will confirm and notify the Zoning Board of any changes.
- The Zoning Board of Appeals schedule was discussed and was agreed that a flexible schedule would prevail over the set third Monday of the month.
- Harding commented that she would forward a checklist to the Zoning Board for their review and comments.

Since there was no further business to come before the Zoning Board of Appeals, the meeting was adjourned at 8:30 p.m.

Date approved: _____ Nancy L. Van Maarseveen

ZONING BOARD OF APPEALS
May 22, 2006

Town Hall
Court Room
8:00 P.M.

At a regular meeting of the Town of Big Flats Zoning Board of Appeals of the Town of Big Flats, Chemung County, held at the Big Flats Town Municipal Hall Offices in said Town of Big Flats on the 22nd day of May 2006, at 8:00 prevailing time. The meeting was called to order by Thomas Rhodes, Chairperson and upon roll being called, the following were:

PRESENT: Thomas Rhodes, Chairperson
Dick Seeley
Joe Rowe
Harry King
Don Williams

STAFF:

GUEST:

PUBLIC HEARING
DEAN FITNESS CENTER
TAX PARCEL #66.04-1-32

Chair Rhodes called the Public Hearing to order at __:__ P.M. He noted that the Public Hearing was duly published in the Elmira Star-Gazette and went on to describe the location, features, and purpose of this proposed variance. He further stated that the purpose of the Public Hearing was to receive public comments on the application that is the subject of this Public Hearing. Rhodes asked for comments from those present who wished to speak:

IN FAVOR:
AGAINST:
COMMENTS:

Rhodes closed the Public Hearing at __:__ P.M to reconvene the business portion of the regular meeting.

RESOLUTION ZBA __-2006
DECISION ON DEAN FITNESS CENTER
AREA VARIANCE
TAX PARCEL #66.04-1-32

The following resolution was offered by Board Member _____, who moved its adoption, and seconded by Board Member _____, to wit:

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from Christopher and Teresa Dean for variances of Sections 17.16.020 and 17.36.200 of the Town Municipal Zoning Law of the Big Flats to permit a fitness center use on tax parcel #66.04-1-32 as shown on drawing received April 4, 2006; and

WHEREAS, the property is located at 61 Main Street in the Town Center (TC) district and is currently owned by Robert and Ruby Drew; and

WHEREAS, the applicant has applied to the Big Flats Planning Board for site plan review to renovate the existing building for use as a Curves fitness center, and the building and parking area are constructed in violation of Chapter 17 of the Town Municipal Code regarding setbacks, buffer yards and lot coverage, and the following variances will be required:

- Required 25' front yard building setback on the southern boundary (Main Street) pursuant to 17.16.020;
- Required 15' side yard setback on the northern boundary pursuant to 17.16.020;
- Required 15' buffer yard on the northern boundary pursuant to 17.36.200 (D)(1)(footnote 1);
- Required 15' side yard setback on the western boundary pursuant to 17.16.020;
- Required 15' buffer yard on the western boundary pursuant to 17.36.200 (D)(1)(footnote 1);
- The parking lot encroaches the required buffer yards pursuant to 17.36.200(D)(3);
- The lot coverage exceeds 50% pursuant to 17.16.020; and

WHEREAS, the adjacent property owners have been notified of this application pursuant to the Rules of the Planning Board; and

WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and thereby requires no further action under SEQR; and

WHEREAS, pursuant to Section 17.60.070 of the Town Municipal Code, the Planning Board of the Town of Big Flats, at its April 25, 2006 meeting, made the following recommendation to the Zoning Board of Appeals that based on their findings there is no feasible way to make the existing building comply with the current code requirements, that failure to grant the variances will render the building unusable, and thereby recommends that the Zoning Board of Appeals grant the requested variances; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat; and

WHEREAS, after review, the Zoning Board has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by the granting of the area variance?
2. Can the benefit/relief sought by the applicant be achieved by some method that will be feasible for the applicant to pursue but would not require a variance?
3. Is the requested variance substantial?
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
5. Is the alleged difficulty self-created?

NOW, THEREFORE, BE IT RESOLVED that the application for approval of the aforementioned variances of Sections 17.16.020 and 17.36.200 of the Zoning Law of the Town of Big Flats is hereby [granted/denied] for the reasons stated above [subject to the following conditions _____].

The question of the forgoing resolution was duly put to a vote as follows:

CARRIED: AYES:
NAYS:
ABSTAIN:
ABSENT:

Dated: Monday, May 22, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

PUBLIC HEARING
BRACKLEY MULTIPLE PURPOSE BARN
AREA VARIANCE
TAX PARCEL #47.00-1-19.11

Chair Rhodes called the Public Hearing to order at __:__ P.M. He noted that the Public Hearing was duly published in the Elmira Star-Gazette and went on to describe the location, features, and purpose of this proposed variance. He further stated that the purpose of the Public Hearing was to receive public comments on the application that is the subject of this Public Hearing. Rhodes asked for comments from those present who wished to speak:

IN FAVOR:
AGAINST:
COMMENTS:

Rhodes closed the Public Hearing at __:__ P.M to reconvene the business portion of the regular meeting.

RESOLUTION ZBA__-2006
DECISION ON BRACKLEY'S MULTIPLE PURPOSE BARN
AREA VARIANCE
TAX PARCEL #47.00-1-19.11

The following resolution was offered by Board Member _____, who moved its adoption, and seconded by Board Member _____, to wit:

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from Doug and Brenda Brackley for variance of Section 17.40.020 to construct, a pole barn larger than permitted as shown on documents received April 11, 2006; and

WHEREAS, the property is 99.935 acres and is located at 223 Chambers Road in the Rural (RU) district; and

WHEREAS, the applicant proposes to construct a 34' x 70' (2380 square feet) structure for storage of farm equipment, equine equipment, and potentially to house horses; and

WHEREAS, Section 17.40.020(B)(2) of the Town Municipal Code permits the maximum size of an accessory structure in the RU district to be 1500 square feet, with two such buildings permitted to be built on one property with a maximum aggregate square footage of 3000 square feet; and

WHEREAS, the proposed height of the structure is less than the maximum 24' height permitted pursuant to the Town Municipal Code; and

WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and as such, no further review is required; and

WHEREAS, the adjacent property owners have been notified of this application; and

WHEREAS, the Planning Board, at its April 25, 2006 meeting, determined that based on its findings that the construction of the structure will not have a detrimental effect on the surrounding properties, and therefore recommends approval of this request by the Zoning Board of Appeals; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat; and

WHEREAS, after review, the Zoning Board has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by the granting of the area variance?
2. Can the benefit/relief sought by the applicant be achieved by some method that will be feasible for the applicant to pursue but would not require a variance?
3. Is the requested variance substantial?
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
5. Is the alleged difficulty self-created?

NOW, THEREFORE, BE IT RESOLVED that the application for above requested variance of Section 17.40.020 of the Zoning Law of the Town of Big Flats is hereby tabled pending comments from the County Planning Board pursuant to General Municipal Law Section 239-m.

The question of the forgoing resolution was duly put to a vote as follows:

CARRIED: AYES:
NAYS:
ABSTAIN:
ABSENT:

Dated: Monday, May 22, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

MINUTES:

Chairman Rhodes asked if there were any corrections before accepting and approving the minutes of April 17, 2006. There being none, _____ made a motion to accept and approve the minutes of April 17, 2006, seconded by _____. All were in favor, motion carried.

MEMBERS COMMENTS:

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Since there was no further business to come before the Zoning Board of Appeals, the meeting was adjourned at __:__ p.m.

Date approved: _____ Nancy L. Van Maarseveen

ZONING BOARD OF APPEALS
JUNE 19, 2006

Town Hall
Court Room
7:00 P.M.

At a regular meeting of the Town of Big Flats Zoning Board of Appeals of the Town of Big Flats, Chemung County held at the Big Flats Town Municipal Hall Offices in said Town of Big Flats on the 19th day of June 2006, at 7:00 p.m. The meeting was called to order by Thomas Rhodes, Chairperson and upon roll being called, the following were:

PRESENT: Thomas Rhodes, Chairperson
Joe Rowe
Don Williams
Harry King
Dick Seeley

STAFF: Maureen Harding, Director of Planning

GUEST: Donald Brown, David Kartzman, Ron Cobb, Robin Siglin, Paul Campbell,
Beverly Phillips, Jane King

MINUTES:

Chairman Rhodes asked if there were any corrections before accepting and approving the minutes of May 22, 2006. Rowe made a motion to accept and approve the minutes of May 22, 2006 with correction, seconded by Seely. All were in favor, motion carried.

Chairman Rhodes informed the Board that due to the Chemung County Planning Board meeting rescheduling, Brackley's area variance would not be addressed at this meeting as indicated on the agenda. The decision will be issued at the meeting scheduled for Tuesday, July 11, 2006.

PUBLIC HEARING
DANDY MINI MART
AREA VARIANCES
TAX PARCELS #76.00-2-10.2 and #76.00-2-10.111

Chair Rhodes called the Public Hearing to order at 7:06 P.M. He noted that the Public Hearing was duly published in the Elmira Star-Gazette and went on to describe the location, features, and purpose of this proposed subdivision. He further stated that the purpose of the Public Hearing was to receive public comments on the application that is the subject of this Public Hearing. Rhodes asked for comments from those present who wished to speak:

IN FAVOR: Ron Cobb of Hawk Engineering presented that the proposed site plan would include a new convenience store with a pizza and sandwich area, a bank, and a new gasoline fuel-dispensing island. He explained that the owner purchased additional land to the East to make the project comply with the code as much as possible since the existing parcel was too small. The land to the South of the site is a golf course.

AGAINST: None

COMMENTS: Maureen Harding, Director of Planning, described the application before the Board. She explained that the two area variances are to meet the buffer and front yard setback requirements as described in the proposed resolution.

Seely asked if the concerns of lighting spillage have been addressed. Cobb replied that the applicant has provided a full lighting plan to the Planning Board.

Harding provided a dimensioned drawing showing that the fuel dispensers and island are contained within the buffer and setback yards, partially because of the lot size. These required setbacks include a 25 foot buffer yard, a 25 foot front yard setback and a 25 foot transitional yard due to the Residential (R2) district abutting a Business Neighborhood (BN) district. She asked Cobb to provide for the Board the New York State regulation that requires the pumps to be set back 50 feet from the property line. He responded that this was correct, although he was unsure which specific fire or safety regulation restricted their location from the building and roadway.

Rowe asked if the applicant has considered repositioning the building to eliminate the required variances. Cobb replied that the distance between the fuel pumps and structure would still require variances.

Rhodes declared the public comment portion of this hearing closed and explained that the Board would not be able to vote at this meeting until receipt of comments from the Chemung County Planning Board.

Rowe expressed that he does not feel that he has received sufficient information to fill out the five criteria or to make a decision. Rhodes agreed.

Rhodes closed the Public Hearing at 7:25 P.M to reconvene the business portion of the regular meeting.

**RESOLUTION ZBA 5-2006
DANDY MINI MART
AREA VARIANCES
TAX PARCEL #76.00-2-10.2 and #76.00-2-10.111**

Resolution by: Rowe
Seconded by: Williams

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from Williams Oil and Propane, owner of tax parcels #76.00-2-10.2 and #76.00-2-10.111, for variances of Sections 17.16.020 and 17.36.200(B)(2) as shown on drawings by Hawk Engineering, project # 4012, last revised April 11, 2006; and

WHEREAS, the property is located at 3149 State Route 352 in the Business Neighborhood (BN) district; and

WHEREAS, the applicant has applied to the Big Flats Planning Board for site plan approval to demolish the existing building and fuel island and construct a convenience store with pizza and sandwich sales, a bank with drive-thru, and new gasoline dispensing island; and

WHEREAS, the proposed site plan has features that do not comply with Chapter 17 of the Town Municipal Code, specifically the following:

- The gasoline dispensing island is proposed to be constructed in the front yard setback in violation of Section 17.16.020,
- The gasoline dispensing island is proposed to be constructed in the required buffer yard in violation of Section 17.36.200(B)(2); and

WHEREAS, pursuant to Section 17.60.070 of the Town Municipal Code, the Planning Board is required to report its findings and recommendation to the Zoning Board of Appeals, and at its May 23, 2006 meeting recommended that the Zoning Board of Appeals grant the requested variances stating the following:

- Although there is a feasible means available to the applicant to achieve the benefit, the requested variances retain the integrity of the surrounding community and thus there will be no detrimental effect on the adjacent properties and thereby recommends that the Zoning Board of Appeals grant the required variances for the gasoline dispensing island; and

WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and as such no further review is required; and

WHEREAS, the adjacent property owners have been notified of this application pursuant to the Rules of the Planning Board; and

WHEREAS, this application has been referred to the Chemung County Planning Board pursuant to GML-239m as this property is located on State Route 352; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat; and

NOW, THEREFORE, BE IT RESOLVED that the application for above requested variance of Sections 17.16.020 and 17.36.200(B)(2) of the Zoning Law of the Town of Big Flats is hereby tabled pending comments from the County Planning Board pursuant to General Municipal Law Section 239-m.

The question of the forgoing resolution was duly put to a vote as follows:

CARRIED:	AYES:	Seely, Williams, Rowe, King, Rhodes
	NAYS:	None
	ABSTAIN:	None
	ABSENT:	None

Dated: Monday, June 19, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

PUBLIC HEARING
KARTZMAN CAFE
AREA VARIANCES
TAX PARCEL #66.02-2-51

Chair Rhodes called the Public Hearing to order at 7:26 P.M. He noted that the Public Hearing was duly published in the Elmira Star-Gazette and went on to describe the location, features, and purpose of this proposed subdivision. He further stated that the purpose of the Public Hearing was to receive public comments on the application that is the subject of this Public Hearing. Rhodes asked for comments from those present who wished to speak:

IN FAVOR: David Kartzman, the applicant, explained that he proposes a café style restaurant that would serve breakfast and lunch between the hours of 6:00 am to 2:00 pm. The site plan includes a garden patio area, walkway from the parking area and aesthetic improvements to the existing structure.

AGAINST: None

COMMENTS: The Director of Planning presented a brief review of the application and described the two variances required for the site plan to comply with the Town Municipal Code. The parking area is located within the (25') rear yard setback and the front portion of the existing principal structure is located and encroaches on the (15') front buffer yard.

Rhodes asked that the record show that this Board has received a Planning Staff Report and the Resolution of findings from the Planning Board. He explained that the Board would not be able to vote at this meeting until receipt of comments from the Chemung County Planning Board. He declared the public comment portion of this hearing closed.

Rhodes closed the Public Hearing at 7:35 P.M to reconvene the business portion of the regular meeting.

**RESOLUTION ZBA 6-2006
KARTZMAN CAFE
AREA VARIANCES
TAX PARCEL #66.02-2-51**

Resolution by: Williams
Seconded by: Rowe

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from David Kartzman, owner of tax parcel #66.04-2-51, for variance of Sections 17.36.200 and 17.16.020 of the Zoning Law of the Town of Big Flats; and

WHEREAS this Board has received an application for site plan approval from David Kartzman, owner of tax parcel #66.02-2-51, for a standard restaurant as shown on a drawing by Hunt Engineers, Project # 5472-001 dated April 7, 2006; and

WHEREAS, the property is 1.026 acres and is located at 485 Maple Street in the Town Center (TC) district; and

WHEREAS, the property is currently used as a single-family residence, and the applicant intends to convert the property for a standard restaurant; and

WHEREAS, the existing garage will be removed for this project; and

WHEREAS, the following site plan features do not comply with Chapter 17 of the Town Municipal Code and will require variances prior to further action by the Planning Board:

- The existing building is constructed in the front buffer yard in violation of Section 17.36.200(D)(2),
- The parking spaces are located in the rear setback in violation of Section 17.16.020; and

WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and as such no further review is required; and

WHEREAS, pursuant to Section 17.60.070 of the Town Municipal Code, the Planning Board is required to report its findings and recommendation to the Zoning Board of Appeals, and at its May 23, 2006 meeting recommended that the Zoning Board of Appeals grant the requested variances based on the following:

- There is no feasible way to make the existing building comply with the current code requirements,
- The parking spaces have been located strategically on the parcel and away from the road, thereby retaining the integrity of the neighborhood and thus there will be no detrimental effect on the adjacent properties; and

WHEREAS, the adjacent property owners have been notified of this application pursuant to the Rules of the Planning Board; and

WHEREAS, this application has been referred to the Chemung County Planning Board pursuant to GML-239m as this property is located on County Route 17; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat; and

NOW, THEREFORE, BE IT RESOLVED that the application for above requested variance of Sections 17.36.200 and 17.16.020 of the Zoning Law of the Town of Big Flats is hereby tabled pending comments from the County Planning Board pursuant to General Municipal Law Section 239-m.

The question of the forgoing resolution was duly put to a vote as follows:

CARRIED:	AYES:	Seely, Williams, Rowe, King, Rhodes
	NAYS:	None
	ABSTAIN:	None
	ABSENT:	None

Dated: Monday, June 19, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

**PUBLIC HEARING
PHILLIPS AREA VARIANCE
TAX PARCEL #57.01-1-11**

Chair Rhodes called the Public Hearing to order at 7:40 P.M. He noted that the Public Hearing was duly published in the Elmira Star-Gazette and went on to describe the location, features, and purpose of this proposed subdivision. He further stated that the purpose of the Public Hearing was to receive public comments on the application that is the subject of this Public Hearing. Rhodes asked for comments from those present who wished to speak:

IN FAVOR: Beverly Phillips, the applicant, explained that she and her husband have acquired a great deal of large equipment and would like a third accessory building to store the equipment. Some of which is presently stored in a tent structure. She feels that an additional accessory building would be aesthetically more pleasing than the tent-styled structure now being used for storage. Rhodes asked the applicant if they had explored adding to the current structures. Phillips replied no, because the current structures are 20-plus years old.

Don Brown, contractor for the applicant, commented that adding on to the current accessory structures would be possible. However, it would make the existing accessory structure 60-feet long, which in his opinion would have a greater aesthetic impact. Because the proposed accessory structure would be built behind the existing accessory structure and would not be visible from the road. Phillips added that the surrounding neighbors have submitted letters agreeing to the proposed accessory building.

AGAINST: None

COMMENTS: Maureen Harding, Director of Planning, gave a brief review of the application and described the area variance required in order to comply with the Town Municipal Code. She explained that the two existing accessory structures already exceed the maximum permitted cumulative square feet for accessory buildings associated with a principal use.

Rhodes asked the applicant why this Board should allow a third accessory building that would exceed the code by 1,000 square feet, especially considering there are no additional accessory buildings similarly in her residential neighborhood. Phillips explained that the neighbors have attached garages not considered an accessory building, where her detached garage is considered an accessory structure. In addition, the neighbors do not own large equipment because her husband plows their driveways.

Rhodes asked that the record show that this Board has received a Planning Staff Report and the Resolution of findings from the Planning Board. He declared the public comment portion of this hearing closed.

Rhodes closed the Public Hearing at 7:52 P.M to reconvene the business portion of the regular meeting.

**RESOLUTION ZBA 7-2006
PHILLIPS AREA VARIANCE
TAX PARCEL #57.01-1-11**

Resolution by: Seeley
Seconded by: Williams

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from Howard Phillips owner of tax parcel #57.01-1-11, for variances of Section 17.40.020(B)(2) of the Town Municipal Zoning Law to construct a third accessory structure, and to have more square footage of accessory structures than permitted, as shown on documents received April 11, 2006; and

WHEREAS the property is 2.051 acres and is located at 319 Hibbard Road in the Residential (R1) district; and

WHEREAS the applicant proposes to construct a 24' x 31' (744 square feet) structure for storage of equipment; and

WHEREAS currently there exists two accessory buildings with a total cumulative square foot area of 1344 square feet; and

WHEREAS the applicant is requesting a third accessory structure, and the total cumulative square foot area of the three buildings will be 2088 square feet; and

WHEREAS Section 17.40.020 (B)(2) of the Town Municipal Code permits the maximum size of an accessory structure in the R1 district to be 750 square feet, with two such buildings permitted to be built on one property with a maximum aggregate square footage of 1000 square feet; and

WHEREAS the proposed height of the structure will be 14 feet, and the maximum height permitted pursuant to the Town Municipal Code is 24 feet; and

WHEREAS for environmental review purposes an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and as such no further review is required; and

WHEREAS, pursuant to Section 17.60.070 of the Town Municipal Code, the Planning Board of the Town of Big Flats, at its May 23, 2006 meeting, determined that the construction of the structure will not have a detrimental effect on the surrounding properties, that the applicant's needs to house the equipment is valid, and therefore recommends approval of the requested variances by the Zoning Board of Appeals; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat; and

WHEREAS, after review, the Zoning Board has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by the granting of the area variance?
The two existing accessory structures already exceed the code thresholds. Allowing a third accessory structures in a residential neighborhood could potentially impact the surrounding character of the neighborhood, set a precedence, and be perceived as a special privilege to the applicant.
2. Can the benefit/relief sought by the applicant be achieved by some method that will be feasible for the applicant to pursue but would not require a variance?
A request for a smaller structure would still exceed the code threshold, because the two existing accessory structures already exceed what is allowed.
3. Is the requested variance substantial?
The requested variance is substantial in that the applicant is asking for more than double the percentage increase for maximum allowable cumulative area with the addition of a third accessory structure.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
It has the potential to adversely affect the physical or environmental conditions in the neighborhood. The adjacent property owners within the district are entitled to the protection under the code.
5. Is the alleged difficulty self-created?
The applicant is applying for an additional accessory structure without demonstrating that it is the ordinance that is presenting practical difficulties or that the property itself presents constraints that create unnecessary hardship. Therefore, as there is no alleged difficulty in complying with the zoning law, the request is indeed self-created.

NOW, THEREFORE, BE IT RESOLVED that the application for approval of the aforementioned variances of Section 17.40.020 of the Zoning Law of the Town of Big Flats is hereby denied for the reasons stated above.

CARRIED: **AYES:** None
NAYS: Seely, Williams, Rowe, King, Rhodes
ABSTAIN: None
ABSENT: None

Dated: Tuesday, June 19, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

PUBLIC HEARING
SIGLIN SIGN VARIANCE
TAX PARCEL #66.02-2-19

Chair Rhodes called the Public Hearing to order at 8:13 P.M. He noted that the Public Hearing was duly published in the Elmira Star-Gazette and went on to describe the location, features, and purpose of this proposed subdivision. He further stated that the purpose of the Public Hearing was to receive public comments on the application that is the subject of this Public Hearing. Rhodes asked for comments from those present who wished to speak:

IN FAVOR: Robin Siglin, the applicant, brought in her existing sign that identifies her home business. She feels that she needs to double the size of her sign to make it more visible for passing traffic. She does a considerable amount of advertising; however, receives a large amount of her business through passing traffic. She referenced to an existing sign in the neighborhood that appears larger than her requested one, and that she is not aware of any complaints from the neighbors regarding that sign.

AGAINST: None

COMMENTS: Maureen Harding, Director of Planning, described the application before the Board and reviewed the requested variance. In reply to the applicant's comment regarding the larger sign in her neighborhood, Harding commented that the sign might have existed before the currently enacted Zoning Code.

The Board offered several suggestions to the applicant to increase the visibility of the present sign. Rowe commented that the applicant was aware of the code at the commencement of her business since 2003.

Seely asked if any adjoining property letters had been received regarding the application. The secretary replied that none have been received.

Rhodes asked that the record show that this Board has received a Planning Staff Report and a Resolution of Findings from the Planning Board. He declared the public comment portion of this hearing closed.

Rhodes closed the Public Hearing at 8:23 P.M to reconvene the business portion of the regular meeting.

RESOLUTION ZBA 8-2006
SIGLIN SIGN VARIANCE
TAX PARCEL #66.02-2-19

Resolution by: Seeley
Seconded by: Williams

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from Robin Siglin, owner of tax parcel #66.02-2-19, for an area variance to have a sign larger than permitted; and

WHEREAS, the property is located at 66 Hillview Drive in the Residential 1(R1); and

WHEREAS, the applicant operates a home occupation, permitted as of right pursuant to Section 17.12 of the Town Municipal Code, and said applicant is requesting an area variance to install a 24" x 30" (5 square feet) sign in the front yard; and

WHEREAS, Section 17.52.050(A) of the Town Municipal Code permits one home occupation sign to be a maximum of two (2) square feet, and such sign is to be affixed to the dwelling unit or installed on a post no higher than eight (8) feet above finished grade; and

WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and as such no further review is required; and

WHEREAS, pursuant to Section 17.60.070 of the Town Municipal Code, the Planning Board is required to report its findings and recommendation to the Zoning Board of Appeals, and at its June 6, 2006 meeting recommended denial of the request by the applicant based on the following:

1. *Can the benefit be achieved by other means feasible to the applicant?*
Yes. The effect could be achieved by other means feasible under the zoning code. For example, it would be possible to gain improved visibility of the sign through the creative use of height, different materials, fonts and type size, colors and design and constructing a more permanent sign affixed to a post.
2. *Will there be an undesirable change in the neighborhood character or to nearby properties?*
Yes. The surrounding neighborhood is primarily residential, therefore allowing a larger sign than permitted by code for a home business could produce an undesirable change in the character of the neighborhood. Additionally, granting a variance for increase in signage area would result in setting a precedence that is not enjoyed by other property owners within the same zoning district.
3. *Is the request substantial?*
Yes. The applicant is requesting more than double the allowable size for a sign per code.
4. *Will the request have adverse physical or environmental effects?*
Yes. A larger sign could have a potential adverse impact to the physical conditions in the neighborhood. This impact is specifically related to the potential for visual impact above and beyond the existing baseline of the residential neighborhood. While the applicant is entitled to the reasonable use of her property, the adjacent property owners within the district are entitled to the protection of valued features and development that complies with the local zoning code.
5. *Is the alleged difficulty self-created?*
Yes.

WHEREAS, the adjacent property owners have been notified of this application pursuant to the Rules of the Planning Board; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat; and

WHEREAS, after review, the Zoning Board has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by the granting of the area variance?
Since the surrounding community character of the neighborhood is residential, it is possible that the request could in fact produce an undesirable change in the character of the neighborhood. Additionally, granting a variance for increase in signage area would result in setting a precedence not enjoyed by other property owners within the same zoning district.
2. Can the benefit/relief sought by the applicant be achieved by some method that will be feasible for the applicant to pursue but would not require a variance?
The Board determined that with a change in lettering and a more permanent base, the present sign could serve adequately to identify her business without relief from the code.
3. Is the requested variance substantial?
The Board ruled that the percentage increase in the size of the sign was substantial.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
The Board determined that the proposed increase in area could affect the physical conditions in the neighborhood. They also agreed that the current regulation allowing for one (1) sign at 2-square feet associated with home-based businesses in a residential neighborhood was reasonable and appropriate when compared to larger signs permitted in a commercial business district.
5. Is the alleged difficulty self-created?
The Board determined that the request was self-created because she was aware of the sign codes in a residential district at the time she established her home-based business. The applicant has failed to show hardship and a need to substantially increase her sign in size larger than the code allows.

NOW, THEREFORE, BE IT RESOLVED that the application for approval of the aforementioned variances of Section 17.40.020 of the Zoning Law of the Town of Big Flats is hereby denied for the reasons stated above.

CARRIED:	AYES:	None
	NAYS:	Seely, Williams, Rowe, King, Rhodes
	ABSTAIN:	None
	ABSENT:	None

Dated: Tuesday, June 19, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

PUBLIC HEARING
CAMPBELL AREA VARIANCE
TAX PARCELS # 57.02-1-4.2

Chair Rhodes called the Public Hearing to order at 8:37 P.M. He noted that the Public Hearing was duly published in the Elmira Star-Gazette and went on to describe the location, features, and purpose of this proposed subdivision. He further stated that the purpose of the Public Hearing was to receive public comments on the application that is the subject of this Public Hearing. Rhodes asked for comments from those present who wished to speak:

IN FAVOR: Paul Campbell, the applicant, commented that the present house is 1,400 square feet and does not have a basement or attic to utilize for needed additional space. The proposed two-story addition would include a full basement. The adjoining neighbor has submitted a letter stating that he has no objection. The north side of the house was the only location because of the location of the well on the west side of the house and the septic leach field on the east side of the house. The utilities are presently located under the house in a 42" crawl space.

AGAINST: None

COMMENTS: Maureen Harding, Director of Planning, described the application before the Board and reviewed the requested variance as described in the proposed resolution.

Rowe commented that the site plan drawing is not to scale.

Rhodes asked that the record show that this Board has received a Planning Staff Report and a Resolution of Findings from the Planning Board. He declared the public comment portion of this hearing closed.

Rhodes closed the Public Hearing at 8:44 P.M to reconvene the business portion of the regular meeting.

**RESOLUTION P 9-2006
CAMPBELL AREA VARIANCE
TAX PARCELS # 57.02-1-4.2**

Resolution by: Rowe
Seconded by: Seeley

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from Paul J. Campbell, owner of tax parcel # 57.02-1-4.2, for an area variance to construct an addition closer to the property line than permitted as shown on documents received May 22, 2006; and

WHEREAS, the property is located at 200 Yawger Road in the Rural (RU) district; and

WHEREAS, the applicant proposes to construct an addition to the north side of the existing house, and said addition will encroach the required side yard; and

WHEREAS, Section 17.16.020 of the Town Municipal Code requires a 30' side yard setback for a one unit dwelling in the RU district, and the applicant is proposing the addition within 20' of the property line, thus requiring a variance of 10'; and

WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and as such no further review is required; and

WHEREAS, pursuant to Section 17.60.070 of the Town Municipal Code, the Planning Board is required to report its findings and recommendation to the Zoning Board of Appeals, and at its June 6, 2006 meeting determined that the construction of the addition will not have a detrimental effect on the surrounding properties, that the applicant has demonstrated that there is no other feasible location for the addition; and therefore, recommends approval of this request by the Zoning Board of Appeals; and

WHEREAS, the adjacent property owners have been notified of this application pursuant to the Rules of the Planning Board; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat; and

WHEREAS, after review, the Zoning Board has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by the granting of the area variance?
The Board agreed that the addition would not produce a change in the character of the neighborhood because of the rural residential open land and low-density character surrounding the applicant's property.
2. Can the benefit/relief sought by the applicant be achieved by some method that will be feasible for the applicant to pursue but would not require a variance?
The Board agreed that the property does not extend itself to an alternative expansion of the dwelling.
3. Is the requested variance substantial?
The Board agreed the requested 10' encroachment into the side yard is not substantial, particularly as it regards the low-density character within the Rural Residential district.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
The Board agreed that the variance would have no impact because of the area's large expanse and openness. Therefore, conditions of the neighborhood would not be affected.
5. Is the alleged difficulty self-created?
The Board agreed that the house and lot offer limited choices to adding an addition; however, the difficulty is self-created due to the applicant knowing about the zoning constraints before his requested action.

NOW, THEREFORE, BE IT RESOLVED that the application for approval of the aforementioned variance of Section 17.16.020 of the Zoning Law of the Town of Big Flats is hereby granted for the reasons stated above.

CARRIED:	AYES:	Seely, Williams, Rowe, King, Rhodes
	NAYS:	None
	ABSTAIN:	None
	ABSENT:	None

Dated: Tuesday, June 19, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

MEMBERS COMMENTS:

- The next scheduled Zoning Board of Appeals meeting will be held at the Big Flats Community Center, Conference Room D on July 11, 2006, at 7:00 P.M.
- Harding updated the Board on the proposed Minor Site Plan Waiver Agreement with Chemung County Planning Board. She stated that she has forwarded a sample of an agreement to the Attorney for the Town, and expects that within the next two months the proposed amendments to the local zoning code would be complete. Rhodes asked who would be making the determination

as to what is a Minor Site Plan. Harding replied that a threshold in defining what is major or minor must be determined.

- Harding updated the Board that within a joint workshop, the Board in conjunction with the Planning Board will review procedures and by-laws. The Attorney for the Town requested that the workshop be a round table discussion format and it will be scheduled within the next month.
- Harding commented that she is working on developing compelling reasons to hold Planning Board meetings on a four-week schedule in an effort to correlate with the Chemung County Planning Board meetings and to provide a predictable schedule of dates for both the Planning Board and for the Zoning Board of Appeals.

Since there was no further business to come before the Zoning Board of Appeals, the meeting was adjourned at 9:13 p.m.

Date approved: _____ Nancy L. Van Maarseveen

**ZONING BOARD OF APPEALS
JULY 11, 2006**

**Town of Big Flats
Community Center
Conference Room "D"
7:00 P.M.**

At a regular meeting of the Town of Big Flats Zoning Board of Appeals of the Town of Big Flats, Chemung County held at the Big Flats Town Municipal Hall Offices in said Town of Big Flats on the 19th day of June 2006, at 7:00 p.m. The meeting was called to order by Thomas Rhodes, Chairperson and upon roll being called, the following were:

PRESENT: Thomas Rhodes, Chairperson
Joe Rowe
Don Williams
Harry King
Dick Seeley

STAFF: Maureen Harding, Director of Planning

GUEST: Ron Cobb, Brenda Brackley, David Kartzman

MINUTES:

Chairman Rhodes asked if there were any corrections before accepting and approving the minutes of June 19, 2006. Being none Rowe made a motion to accept and approve the minutes of June 19, 2006, seconded by King. All were in favor, motion carried.

On receipt of comments from the County Planning Board, Rhodes asked a motion to remove the Dandy Mini Mart application from the table for discussion, pursuant to Resolution ZBA 5-2006.

Rowe moved to remove the motion from the table for discussion. Seeley seconded. All were in favor, motion carried.

**DANDY MINI MART
AREA VARIANCES
TAX PARCEL #76.00-2-10.2 and #76.00-2-10.111**

Chairman Rhodes updated the Board that the Chemung County Planning Board at their June 22, 2006 meeting returned the application for local determination.

Maureen Harding, Director of Planning, reviewed the variances and stated that the only new information is the Chemung County Planning Board meeting minutes.

Rowe noted that the existing structure is in the front yard setback. He asked if the applicant had considered shifting the building toward the rear yard setback to relieve the substantial request for a front yard setback. Harding explained that there is a clearance issue between the concrete curb and the drive. Ron Cobb of Hawk Engineering, representing the applicant replied that the curb could be removed.

Rowe suggested an option be considered that the employees parking area be moved to the grass area shown in the southeast corner of the site plan. Harding replied that the Planning Board is concerned with the potential for vehicle/pedestrian conflict with the through truck traffic. She stated that there are

additional concerns regarding changes to the impervious surface coverage areas and encroachment into the rear setback and the drainage field.

Seeley asked how far back from the road should the islands be located and would there be landscaping between the road and the islands. Cobb replied that it is approximately 115 feet and that there would be a landscaped berm to comply with the buffer/barrier requirements between residential/commercial uses.

There being no further questions or comments, Rhodes asked for a motion to adopt the resolution.

**RESOLUTION ZBA 10-2006
DANDY MINI MART
AREA VARIANCES
TAX PARCEL #76.00-2-10.2 and #76.00-2-10.111**

Resolution by: Rowe
Seconded by: Seeley

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from Williams Oil and Propane, owner of tax parcels #76.00-2-10.2 and #76.00-2-10.111, for variances of Sections 17.16.020 and 17.36.200(B)(2) as shown on drawings by Hawk Engineering, project # 4012, last revised April 11, 2006; and

WHEREAS, the property is located at 3149 State Route 352 in the Business Neighborhood (BN) district; and

WHEREAS, the applicant has applied to the Big Flats Planning Board for site plan approval to demolish the existing building and fuel island and construct a convenience store with pizza and sandwich sales, a bank with drive-thru, and new gasoline dispensing island; and

WHEREAS, the proposed site plan has features that do not comply with Chapter 17 of the Town Municipal Code, specifically the following:

- The gasoline dispensing island is proposed to be constructed in the front yard setback in violation of Section 17.16.020,
- The gasoline dispensing island is proposed to be constructed in the required buffer yard in violation of Section 17.36.200(B)(2); and

WHEREAS, pursuant to Section 17.60.070 of the Town Municipal Code, the Planning Board is required to report its findings and recommendation to the Zoning Board of Appeals, and at its May 23, 2006 meeting recommended that the Zoning Board of Appeals grant the requested variances stating the following:

- Although there is a feasible means available to the applicant to achieve the benefit, the requested variances retain the integrity of the surrounding community and thus there will be no detrimental effect on the adjacent properties and thereby recommends that the Zoning Board of Appeals grant the required variances for the gasoline dispensing island; and

WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and as such no further review is required; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing, received comments thereat, and the application was subsequently tabled pending review by the Chemung County Planning Board; and

WHEREAS, the Chemung County Planning Board, at its June 22, 2006 meeting stated, "There is no obvious reason to object to Town approval"; and therefore, recommended said approval;

WHEREAS, after review, the Zoning Board has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by the granting of the area variance?
This application does not pose an undesirable change because the proposed use of the property is similar to the existing use.
2. Can the benefit/relief sought by the applicant be achieved by some method that will be feasible for the applicant to pursue but would not require a variance?
The request for variances could be achieved by proposing a smaller building or repositioning the site to decrease the substantial variances requested.
3. Is the requested variance substantial?
The proposed gas pump islands require a substantial variance.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
The impact of the proposed location of the fuel pumps is proposed to be mitigated with landscaping, berming, and buffering along the front property line.
5. Is the alleged difficulty self-created?
The request for variances is self-created by the applicant proposing to enlarge his business within the constraints of the property.

NOW, THEREFORE, BE IT RESOLVED that the application for above requested variances of Sections 17.16.020 and 17.36.200(B)(2) of the Zoning Law of the Town of Big Flats is hereby granted with the following condition:

- The encroachment within the front buffer yard shall not exceed 15 feet.

The question of the forgoing resolution was duly put to a vote as follows:

CARRIED:	AYES:	King, Rowe, Rhodes, Williams, Seeley
	NAYS:	None
	ABSTAIN:	None
	ABSENT:	None

Dated: Tuesday, July 11, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

On receipt of comments from the County Planning Board, Rhodes asked for a motion to remove the Kartzman application from the table for discussion, pursuant to Resolution ZBA 6-2006.

Rowe made a motion to remove the Kartzman Café application from the table for discussion. Williams seconded. All were in favor, motion carried.

KARTZMAN CAFE
AREA VARIANCES
TAX PARCEL #66.02-2-51

Chairman Rhodes informed the Board that the Chemung County Planning Board at their June 22, 2006 meeting returned the application for local determination.

Maureen Harding, Director of Planning, reviewed the variances and updated the Board that the only documentation received since the Public Hearing on June 19, 2006 are the minutes of the Chemung County Planning Board meeting.

Seeley questioned if comments had been received from the Big Flats Fire Department concerning this application. The Fire Department was issued an adjoining property owner letter on June 16, 2006 and no comment was returned.

Williams asked Kartzman, the applicant, if he had reviewed the concerns from the Chemung County Health Department, dated June 12, 2006. Kartzman responded that he could comply with the 20-seat capacity and that the septic system would be accessible.

The 11.7-foot encroachment into the front buffer yard setback was determined from the front of the covered entrance. Harding replied that pursuant to the Bulk and Density Table, the minimum front yard setback is 25 feet, the buffer yard setback is 15 feet, and the rear setback is 25 feet. The proposed parking area is encroaching 18 feet into the rear setback.

Seeley asked Kartzman, if he had considered relocating the parking area. Kartzman replied that it was discussed but the issue of encroaching into both the rear yard setback and the rear buffer yard was a disadvantage. He explained that in considering the visual impacts of the parking area, the rear of the site would enable screening from the front of the structure using landscaping treatment. An 8-foot fence would act as a barrier on the east side of the property because there is not enough room for landscaping.

There being no further questions or comments, Rhodes asked for a motion to adopt the resolution.

**RESOLUTION ZBA 11-2006
KARTZMAN CAFE
AREA VARIANCES
TAX PARCEL #66.02-2-51**

Resolution by: Seeley
Seconded by: Rowe

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from David Kartzman, owner of tax parcel #66.04-2-51, for variance of Sections 17.36.200 and 17.16.020 of the Zoning Law of the Town of Big Flats; and

WHEREAS this Board has received an application for site plan approval from David Kartzman, owner of tax parcel #66.02-2-51, for a standard restaurant as shown on a drawing by Hunt Engineers, Project # 5472-001 dated April 7, 2006; and

WHEREAS, the property is 1.026 acres and is located at 485 Maple Street in the Town Center (TC) district; and

WHEREAS, the property is currently used as a single-family residence, and the applicant intends to convert the property for a standard restaurant; and

WHEREAS, the existing garage will be removed for this project; and

WHEREAS, the following site plan features do not comply with Chapter 17 of the Town Municipal Code and will require variances prior to further action by the Planning Board:

- The existing building is constructed in the front buffer yard in violation of Section 17.36.200(D)(2);

- The parking spaces are located in the rear setback in violation of Section 17.16.020; and

WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and as such no further review is required; and

WHEREAS, pursuant to Section 17.60.070 of the Town Municipal Code, the Planning Board is required to report its findings and recommendation to the Zoning Board of Appeals, and at its May 23, 2006 meeting recommended that the Zoning Board of Appeals grant the requested variances based on the following:

- There is no feasible way to make the existing building comply with the current code requirements,
- The parking spaces have been located strategically on the parcel and away from the road, thereby retaining the integrity of the neighborhood and thus there will be no detrimental effect on the adjacent properties; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing, received comments thereat, and the application was subsequently tabled pending review by the Chemung County Planning Board; and

WHEREAS, the Chemung County Planning Board, at its June 22, 2006 meeting, returned the application for local determination stating “no foreseeable adverse impacts upon intercommunity or countywide interests”; and

WHEREAS, after review, the Zoning Board has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by the granting of the area variance?
The applicant’s plan is to provide aesthetic improvements to the property and the use is a reasonable use of the property with consideration of the adjoining businesses.
2. Can the benefit/relief sought by the applicant be achieved by some method that will be feasible for the applicant to pursue but would not require a variance?
Due to the existing structure and the limited lot size, the benefit cannot be achieved by any other feasible method or means, other than purchasing a larger site.
3. Is the requested variance substantial?
The request is substantial, but any effect in granting the requested variance would be lessened by the open field to rear. The existing structure is too close to the road but a correction would require demolition.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
The applicant is aware of the physical and environmental concerns by the Health Department. The applicant has agreed to adhere to their restrictions and any conditions imposed by the Boards and the Municipal Code.
5. Is the alleged difficulty self-created?
The difficulty is self-created because the applicant purchased a site too small for the intended use.

NOW, THEREFORE, BE IT RESOLVED that the application for above requested variances of Sections 17.36.200 and 17.16.020 of the Zoning Law of the Town of Big Flats is hereby granted for the reasons stated above.

The question of the forgoing resolution was duly put to a vote as follows:

CARRIED:	AYES:	Seeley, Williams, Rhodes, Rowe, King
	NAYS:	None
	ABSTAIN:	None
	ABSENT:	None

Dated: Tuesday, July 11, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

On receipt of comments from the County Planning Board, Rhodes asked for a motion to remove the Kartzman application from the table for discussion, pursuant to Resolution ZBA 4-2006.

Rowe made a motion to remove the Brackley application from the table for discussion.
Seeley seconded. All were in favor, motion carried.

**DECISION ON BRACKLEY'S MULTIPLE PURPOSE BARN
AREA VARIANCE
TAX PARCEL #47.00-1-19.11**

Chairman Rhodes informed the Board that the Chemung County Planning Board at their June 22, 2006 meeting returned the application for local determination.

Maureen Harding, Director of Planning, described the proposed resolution and reviewed the variances.

Seeley commented that he does not feel that the request for this variance would set precedence because of the size of the lot and the fact that the residence sets back 3/8 of a mile from the road and the addition would not be seen from the road or adjoining properties.

Rowe made a motion to deny the application. Chairman Rhodes asked if there was a second. There being none, the motion failed.

Rowe expressed several concerns for granting the variance. He commented that the code does not give leniency to whether a structure can be seen from the road or the size of the lot. Rowe is concerned that future applicants with less acreage may not have the isolation and size of property to afford reasonable justification. He is concerned that the Board is making a different interpretation of the code. Seeley replied that the Board has to consider reasonable use of the land.

Rhodes speculated that the intent of the ordinance was to regulate the size of a structure in relationship to the surrounding area. He feels that the intent was not to require two 1500 square foot buildings instead of one building of less than 3,000 square foot in a low-density rural district. He stated that it is necessary to consider the benefits to the applicants weighed against the detriment to the community and he finds it hard to believe that a building of that size on that acreage is any detriment to the health, safety, or well being of the Town.

Rhodes referred to Chapter 17.40 and commented that an option for the applicant would be to subdivide their parcel and establish a private stable on one parcel and the house on the other. Brenda Brackley, the applicant, replied that their intent is to provide a barn for their daughter's horse, not to board horses. She added that one larger building compared to two smaller buildings would seem to be aesthetically more acceptable.

Harding commented that the issue is density, not necessary different uses and noted that this property has no constraints.

Seeley asked to review the recommendations from the Planning Board. Harding stated that the Zoning Board of Appeals should make decisions based on their knowledge of the facts contained

within the record and not necessarily the findings or recommendations of the other Boards or Staff Reports.

There being no further questions or comments, Rhodes asked for a motion to adopt the resolution.

RESOLUTION ZBA 12-2006
DECISION ON BRACKLEY'S MULTIPLE PURPOSE BARN
AREA VARIANCE
TAX PARCEL #47.00-1-19.11

Resolution by: Rhodes
Seconded by: Williams

The following resolution was offered by Board Member Rhodes, who moved its adoption, and seconded by Board Member Williams, to wit:

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from Doug and Brenda Brackley for variance of Chapter 17.40.020 to construct, a pole barn larger than permitted as shown on documents received April 11, 2006; and

WHEREAS, the property is 99.935 acres and is located at 223 Chambers Road in the Rural (RU) district; and

WHEREAS, the applicant proposes to construct a 34' x 70' (2380 square feet) structure for storage of farm equipment, equine equipment, and potentially to house horses; and

WHEREAS, Section 17.40.020(B)(2) of the Town Municipal Code permits the maximum size of an accessory structure in the RU district to be 1500 square feet, with two such buildings permitted to be built on one property with a maximum aggregate square footage of 3000 square feet; and

WHEREAS, the proposed height of the structure is less than the maximum 24' height permitted pursuant to the Town Municipal Code; and

WHEREAS, for environmental review purposes, an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and as such, no further review is required; and

WHEREAS, the adjacent property owners have been notified of this application; and

WHEREAS, the Planning Board, at its April 25, 2006 meeting, determined that based on its findings that the construction of the structure will not have a detrimental effect on the surrounding properties, and therefore recommends approval of this request by the Zoning Board of Appeals; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat; and

WHEREAS, the Chemung County Planning Board, at its June 22, 2006 meeting, returned the application for local determination stating "no foreseeable adverse impacts upon intercommunity or countywide interests"; and

WHEREAS, after review, the Zoning Board has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by the granting of the area variance?

Due to the isolation and size of the property, the variance would not produce an undesirable change or be a detriment to the character of the neighborhood.

2. Can the benefit/relief sought by the applicant be achieved by some method that will be feasible for the applicant to pursue but would not require a variance?

The applicant could achieve the benefit without a variance at a loss of efficient use of space and increased cost. The consideration of the size of the property and the isolation in a rural district outweighed the concern that granting this variance would set a precedence. The applicant could adhere to the Bulk and Density Table by building two 1500-foot barns or reduce the size of the barn requested.

3. Is the requested variance substantial?

The request is substantial based on the Bulk and Density Table; however, not within the context of a 98-acre isolated rural lot.

4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

The granting of this variance would not affect the physical and environmental conditions of the neighborhood because there are similar structures on adjacent lots and the size and isolation of the property precluding any physical impact.

5. Is the alleged difficulty self-created? Yes since the applicant has owned the property under the current zoning and had duty to discover what the current zoning restrictions were as applied to the property.

NOW, THEREFORE, BE IT RESOLVED that the application for above requested variances of Sections 17.40.020 of the Zoning Law of the Town of Big Flats is hereby granted for the reasons stated above.

The question of the forgoing resolution was duly put to a vote as follows:

CARRIED:	AYES:	King, Rhodes, Williams, Seeley
	NAYS:	Rowe
	ABSTAIN:	None
	ABSENT:	None

Dated: Tuesday, July 11, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

MEMBERS COMMENTS:

- There was a discussion as to rescheduling the Zoning Board of Appeals meetings to a predictable schedule. Maureen asked if the Board would consider scheduling their meeting the last week of the month due to the Chemung County Planning Board meeting normally scheduled the third week of every month. The Board agreed and tentatively set a date of July 27, 2006.
- Harding reminded the Board that July 24, 2006, at 6:30 p.m. has been tentatively set for the Round Table discussion with the Attorney for the Town, Planning and Zoning Board of Appeals. Harding reminded the Board that she had distributed the Tug Hill Commission By-Laws for their consideration in lieu of the By-laws the Board was initially considering. Due to the length of the document, she would have it digitized and distributed again.
- Seeley commented that he would like to recommend a feedback procedure to determine if a code needs modification considering the number of variances being requested.

Since there was no further business to come before the Zoning Board of Appeals, the meeting was adjourned at 8:45 p.m.

Date approved: _____

Nancy L. Van Maarseveen

**ZONING BOARD OF APPEALS
AUGUST 3, 2006**

**Town of Big Flats
Community Center
Conference Room "D"
7:00 P.M.**

A regular meeting of the Town of Big Flats Zoning Board of Appeals of the Town of Big Flats, Chemung County was held at the Big Flats Town Municipal Hall Offices in said Town of Big Flats on the 3rd day of August 2006, at 7:00 p.m. The meeting was called to order by Thomas Rhodes, Chairperson and upon roll being called, the following were:

PRESENT: Thomas Rhodes, Chairperson
Don Williams
Harry King
Dick Seeley

ABSENT: Joe Rowe

STAFF: Maureen Harding, Director of Planning

GUESTS: Marcus Mancini, Mike Smith, Dave Bowers, Mark Watts, Brayton Foster, Mary Ann Balland

MINUTES:

Chairman Rhodes asked if there were any corrections before accepting and approving the minutes of July 11, 2006. Rhodes requested that the motion to remove the Brackley Multi Purpose Barn Area Variance application from the table be added. Williams made a motion to accept and approve the minutes of July 11, 2006 as corrected, seconded by Seeley. Rowe was absent. Rhodes, King, Williams, Seeley were in favor, motion carried.

**PUBLIC HEARING
RETIREMENT ESTATES
AREA VARIANCES
TAX PARCEL #48.03-2-15.1**

Chair Rhodes called the Public Hearing to order at 7:03 P.M. He noted that the Public Hearing was duly published in the Elmira Star-Gazette and went on to describe the location, features, and purpose of this proposed variance. He further stated that the purpose of the Public Hearing was to receive public comments on the application that is the subject of this Public Hearing. Rhodes asked for comments from those present who wished to speak:

IN FAVOR: Marcus Mancini, applicant and owner of Retirement Estates explained his request for Area Variances for three individual lots. He stated that the standard manufactured homes offered by Retirement Estates are 60 feet long and that the buildable portion of the three lots is only 56 feet long. The manufacturer does not make a home 56 feet long unless ordered specially, which costs as much as the standard size. An alternate option previously used is to have the buyer request variances for these lots later, because without a variance a garage is not possible on these lots.

AGAINST: None

COMMENTS: Maureen Harding, Director of Planning, commented that it is difficult for the

applicant to sell these lots because the size would require a costly special unit and there would be no room for a garage.

Rhodes asked if the lots are exactly 56 feet long. Mancini replied that the 56 feet is the allowable building area after the setback and buffers have been applied.

Rhodes asked if there were any other lots that would need a variance. Mancini replied that there are no more lots that need a variance for the same reason.

Williams commented that all three lots were on the outside of the perimeter of the development. Mancini replied that there is a 25-foot setback from the back yard to the back property line, plus a 50-foot barrier before the adjoining property.

Seeley asked if there would be a request for a deck on these lots. Mancini replied that on that particular model there isn't any room for a deck. Usually there are steps on the front where the garage would be. He explains to the buyers what is allowed, if they want more than allowed, they have to look at another lot.

King asked if the intent is for a single or double car garage. Mancini replied that these lots would have only single car garages.

Rhodes asked Mancini why he could not combine lots 61 and 63 to create a large lot that would conform. Mancini replied that he paid for the lots individually and that he could not get the same revenue out of two lots combined than he can get for two separate lots. In addition, those lots are on a hillside with a terrace that would prevent proper development.

The five criteria were discussed. There being no further questions or comments, Rhodes asked for a motion to adopt the resolution.

Rhodes closed the Public Hearing at 7:13 P.M to reconvene the business portion of the regular meeting.

**RESOLUTION ZBA 13-2006
RETIREMENT ESTATES
AREA VARIANCE – 61 RETIREMENT DRIVE
TAX PARCEL #48.03-2-15.1**

Resolution by: Seeley
Seconded by: King

WHEREAS, the Zoning Board of Appeals has referred to this Board an application for Area Variances from Retirement Estates, owner of tax parcel # 48.03-2-15.1, to extend the buildable area of an existing lot to permit the construction of a garage as shown in documents received July 3, 2006; and

WHEREAS, the property is located at 61 Retirement Drive in the Senior Housing Planned Multiple Residential District (SHPMRD); and

WHEREAS, Chapter 17.20.080(A)(5)(c) of the Town Municipal Code requires a 25' rear yard setback in the SHPMRD, and the applicant is proposing to construct within 21' of the lot line, thus requiring a variance of 4'; and

WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and as such no further review is required; and

WHEREAS, pursuant to Section 17.60.070 of the Town Municipal Code, the Planning Board of the Town of Big Flats, at its July 18, 2006 meeting, determined that the requested variance will be consistent with the surrounding properties, that other properties in the development enjoy the same benefit of having a garage, and therefore recommends approval of the requested variance by the Zoning Board of Appeals; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat; and

WHEREAS, after review, the Zoning Board has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by the granting of the area variance?
There would be no change in the character of the neighborhood, especially considering all three lots are on the outside perimeter of the development.
2. Can the benefit/relief sought by the applicant be achieved by some method that will be feasible for the applicant to pursue but would not require a variance?
The applicant has stated that it would be extremely costly to combine the two lots.
3. Is the requested variance substantial?
There would be a minimal visual impact due to the buffer area.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
It would not have an adverse effect or impact on the physical and environmental conditions of the neighborhood or district.
5. Is the alleged difficulty self-created?
The conditions existed when Mancini purchased the development.

NOW, THEREFORE, BE IT RESOLVED that the application for approval of the aforementioned variance of Sections 17.20.080(A)(5) of the Zoning Law of the Town of Big Flats is hereby granted for the reasons stated above.

CARRIED:	AYES:	Seeley, Williams, Rhodes, King
	NAYS:	None
	ABSTAIN:	None
	ABSENT:	None

Dated: Thursday, August 3, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

RESOLUTION ZBA 14-2006
RETIREMENT ESTATES
AREA VARIANCE – 63 RETIREMENT DRIVE
TAX PARCEL #48.03-2-15.1

Resolution by: Williams
Seconded by: King

WHEREAS, the Zoning Board of Appeals has referred to this Board an application for Area Variances from Retirement Estates, owner of tax parcel # 48.03-2-15.1, to extend the buildable area of an existing lot to permit the construction of a garage as shown in documents received July 3, 2006; and

WHEREAS, the property is located at 63 Retirement Drive in the Senior Housing Planned Multiple Residential District (SHPMRD); and

WHEREAS, Chapter 17.20.080(A)(5)(c) of the Town Municipal Code requires a 25' rear yard setback in the SHPMRD, and the applicant is proposing to construct within 21' of the lot line, thus requiring a variance of 4'; and

WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and as such no further review is required; and

WHEREAS, pursuant to Section 17.60.070 of the Town Municipal Code, the Planning Board of the Town of Big Flats, at its July 18, 2006 meeting, determined that the requested variance will be consistent with the surrounding properties, that other properties in the development enjoy the same benefit of having a garage, and therefore recommends approval of the requested variance by the Zoning Board of Appeals; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat; and

WHEREAS, after review, the Zoning Board has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by the granting of the area variance?
There would be no change in the character of the neighborhood, especially considering all three lots are on the outside perimeter of the development.
2. Can the benefit/relief sought by the applicant be achieved by some method that will be feasible for the applicant to pursue but would not require a variance?
The applicant has stated that it would be extremely costly to combine the two lots.
3. Is the requested variance substantial?
There would be a minimal visual impact due to the buffer area.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
It would not have an adverse effect or impact on the physical and environmental conditions of the neighborhood or district.
5. Is the alleged difficulty self-created?
The conditions existed when Mancini purchased the development.

NOW, THEREFORE, BE IT RESOLVED that the application for approval of the aforementioned variances of Sections 17.20.080(A)(5) of the Zoning Law of the Town of Big Flats is hereby granted for the reasons stated above.

CARRIED:	AYES:	King, Rhodes, Williams, Seeley
	NAYS:	None
	ABSTAIN:	None
	ABSENT:	None

Dated: Thursday, August 3, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES

Chairman, Zoning Board of Appeals

RESOLUTION ZBA 15-2006

RETIREMENT ESTATES

AREA VARIANCE – 96 LAZY CIRCLE

TAX PARCEL #48.03-2-15.1

Resolution by: Seeley

Seconded by: Williams

WHEREAS, the Zoning Board of Appeals has referred to this Board an application for Area Variances from Retirement Estates, owner of tax parcel # 48.03-2-15.1, to extend the buildable area of an existing lot to permit the construction of a garage as shown in documents received July 3, 2006; and

WHEREAS, the property is located at 96 Lazy Circle in the Senior Housing Planned Multiple Residential District (SHPMRD); and

WHEREAS, Chapter 17.20.080(A)(5)(c) of the Town Municipal Code requires a 25' rear yard setback in the SHPMRD, and the applicant is proposing to construct within 21' of the lot line, thus requiring a variance of 4'; and

WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and as such no further review is required; and

WHEREAS, pursuant to Section 17.60.070 of the Town Municipal Code, the Planning Board of the Town of Big Flats, at its July 18, 2006 meeting, determined that the requested variance will be consistent with the surrounding properties, that other properties in the development enjoy the same benefit of having a garage, and therefore recommends approval of the requested variance by the Zoning Board of Appeals; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat; and

WHEREAS, after review, the Zoning Board has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by the granting of the area variance?
There would be no change in the character of the neighborhood, especially considering all three lots are on the outside perimeter of the development.
2. Can the benefit/relief sought by the applicant be achieved by some method that will be feasible for the applicant to pursue but would not require a variance?
The applicant has stated that it would be extremely costly to combine the two lots.
3. Is the requested variance substantial?
There would be a minimal visual impact due to the buffer area.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
It would not have an adverse effect or impact on the physical and environmental conditions of the neighborhood or district.
5. Is the alleged difficulty self-created?

The conditions existed when Mancini purchased the development.

NOW, THEREFORE, BE IT RESOLVED that the application for approval of the aforementioned variances of Sections 17.20.080(A)(5) of the Zoning Law of the Town of Big Flats is hereby granted for the reasons stated above.

CARRIED:	AYES:	Seeley, Williams, Rhodes, King
	NAYS:	None
	ABSTAIN:	None
	ABSENT:	None

Dated: Thursday, August 3, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

PUBLIC HEARING
MIKE SMITH SOIL MINING OPERATION
USE VARIANCE
TAX PARCELS #77.00-1-3 & #77.00-1-39.1

Chair Rhodes called the Public Hearing to order at 7:23 P.M. He noted that the Public Hearing was duly published in the Elmira Star-Gazette and went on to describe the location, features, and purpose of this proposed request. He further stated that the purpose of the Public Hearing was to receive public comments on the application that is the subject of this Public Hearing. Rhodes asked for comments from those present who wished to speak:

IN FAVOR: Mike Smith, applicant for a Soil Mining Operation in the Conservation District, explained that his family has owned the farm for 150 years and it is probably the last commercial farm in the area. He has farmed the area with a diversity of crops over the years and has had great difficulty keeping the area profitable. He believes the location on the river bend creates a more profitable product of topsoil and gravel. He considered the allowable options in that district; such as horse farming or a campground, and feels it would not make sense considering the yearly flooding and possibility of another major flood.

The Department of Environmental Conservation (DEC) does not recommend any building in the floodplain. He feels that if he cannot make a living there, he is going to lose the farm. He felt that the size of the request and the fact that it would not be seen from the road would avoid a negative impact.

He described the project:

- The mining would be done over 600 feet away from NYS Route 352.
- The mining would be a hole that gradually slopes down towards the river, which would be regulated by DEC.
- The water table there is about 32 feet.
- He would mine the topsoil first then the gravel.
- The detention pond created would help control the flooding.
- To minimize trips per day for hauling, the life of the mine will be extended to 20 - 25 years, because of the traffic concern
- The site distance on Route 352 is over 1,000 feet, probably 5,000 to 6,000 feet.
- The Department of Transportation (DOT) would regulate the entrance to the site to prevent the trucks from entering traffic too slow.

- Dust concern would be minimal.
- Smith referred to a memo dated July 24, 2006, from Scott Rodabaugh of New York State Department of Environmental Conservation (DEC) offering recommendations for mining operations in the floodplain.

AGAINST: None

COMMENTS: Maureen Harding, Director of Planning, described and reviewed the soil mining application. She explained that mining is not a permitted use in the Conservation District. Therefore, the applicant is applying for a use variance.

Harding explained that the intent of the Conservation district is to delineate open, public-owned and environmentally sensitive land and water areas of the town. Because of their current use, critical relationship to the Chemung River, or extreme environmental sensitivity, these land areas should be preserved and utilized only for less intensive and carefully considered development that is compatible with the sensitive nature of such lands, and to ensure that the existing character, nature and benefits derived from such lands are preserved and retained. The site is located in a Flood Damage Prevention Overlay District and the Aquifer Overlay Protection District.

Harding informed the Board that the applicant submitted a letter addressing the four use variance criteria and that all four of the criteria must be met for a Use Variance approval. In addition, the applicant has received a copy of the Planning Staff Report for his rebuttal.

Through her conversation with the New York State Department of Conservation Regional Permit Administrative Office, she was advised that nothing precludes the applicant from applying for a mining permit and that probably the best way to proceed would be to have the Town and NYSDEC to do a coordinated review.

Rhodes asked Smith to explain his reasoning that this property is uniquely affected compared to the adjoining properties to the east or west. Smith replied that the bend in the river creates floods before other areas and the river is closest in that area.

King asked how many trucks do you estimate entering and exiting onto New York State Route 352. Smith replied that he estimates four trucks an hour. King added that would be 30± trucks a day. Smith replied, yes, that is the reason I changed the timeframe for the mining from 15 years as originally planned to 20 – 25 years.

Seeley agreed that Smith adequately proved that corn does not give a good return. However, he is concerned with setting precedence. If a variance were granted in the Conservation District, would this open this area to mining? Is the intent of our Comprehensive Plan to preserve some of the open lands in our Town? Smith replied that his plan would leave the area open, which is the best thing to do with a floodplain. His other option would be to make a barrier with trees that would catch debris from the river.

Seeley referred to the County mining operation on Chambers Road and the mess that mine has created on the highway. Smith replied that he would be paving the entrance because of traction and would be required to water the roads. He added that there is always the option of calling a trooper to shut it down if he does not abide by the regulations.

Smith referred to Dave Bowers' mining site on Old Corning Road and stated that he does not have a traffic problem, and that his line of site is much less. Smith

introduced Dave Bowers and stated that he is willing to answer any questions from the Board. Seeley asked if there would be on-site cleaning before the trucks get to the highway. Smith replied that it would be an added expense but if it became a problem, he would address it immediately.

Williams asked if the site is 550 feet off the highway. Smith replied yes.

Rhodes asked how much tillable land was included. Smith replied about 12 acres. He added that Mark Watts from the Soil and Conservation District and Brayton Foster, a geologist, were here to answer any questions.

Rhodes asked Smith how he would answer the question as to the alleged hardship being self-created. Smith replied that because the farm has passed from generation to generation, he does not feel that he personally created the problem. Moreover, that he does not create the floods.

Smith stated that because the studies are expensive, he prefers to do the studies required after he meets all four Use Variance requirements. Harding explained that the applicant could not be granted the variance until the SEQR requirements are done, and that DEC as the Lead Agency cannot make a determination until the studies have been submitted and reviewed. She suggested that he prepare the traffic and technical studies in coordination with DEC and the Town as an involved agency.

Seeley asked Harding if a variance could be granted provided the applicant meets all the requirements. Harding replied she does not believe the Board can grant a variance prior to the studies.

Seeley asked Harding because of the size of the request, would it be better for the applicant to apply for a zoning change. Harding replied No, that is considered spot zoning which is an improper amendment to the zoning code. Use Variances are rarely approved in the NYS Case Law, because the applicant has to meet all four criteria.

Smith commented that the Conservation district encompasses 1800 acres; therefore, he does not feel that the 25 acres is large. Harding interjected that the Board is looking at it from the perspective of precedence.

Rhodes commented that an alternative would be to request the Town to add mining as a permitted use to a Conservation district. As a farm, the applicant could build a 25-acre pond without applying for a variance.

Rhodes asked Smith if he feels his application would change the character of the neighborhood. Smith replied that he does not feel that it would because he would be the only one able to see the area.

Rhodes noted for the record that the Board received a report from the Planning Department and recommendation from the Planning Board.

In summary, Rhodes reviewed that the Applicant shall submit a HEC-RAS study and a Traffic Impact Study. Harding added that the Part I EAF would be submitted to the Involved Agencies as listed and that the DEC would complete Part II and the Town would submit their comments as an involved agency. At that time, a determination would be able to be made.

Rhodes asked if there were further questions or comments. There being none, he asked for a motion to adopt the resolution.

At 7:50 P.M. Rhodes adjourned the Public Hearing until such a time that all of the requested information has been completed, submitted and reviewed by this Board. The business portion of the regular meeting reconvened.

RESOLUTION ZBA16-2006
MIKE SMITH SOIL MINING OPERATION
USE VARIANCE
TAX PARCEL #77.00-1-3 & #77.00-1-39.1

Resolution by: Seeley
Seconded by: King

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from Michael M. Smith, owner of tax parcels # 77.00-1-3 & #77.00-1-39.1, for a use variance to permit a Top Soil and Gravel Pit mining operation in a zoning district that currently does not permit such use;

WHEREAS, the property is located off State Route 352 in the Conservation (C) district; and

WHEREAS, the applicant proposes to mine topsoil and gravel from a 25 acres of a 276 acre farm located on the south side of State Route 352 adjacent to the Chemung River; and

WHEREAS, Chapter 17.12 of the Town Municipal Code, being the Use Requirement table, does not permit top soil and gravel pit mining or extraction in the Conservation district; an

WHEREAS, the applicant has submitted the following:

- Application dated June 26, 2006,
- Topography map dated 6/05
- Mine Plan and Base Map prepared by Brayton P. Foster, consulting geologist, dated 7/1/05,
- Reclamation Plan prepared by Brayton P. Foster, consulting geologist, dated 7/1/05,
- Full Environmental Assessment Form (EAF) dated November 11, 2005,
- Copy of the DEC Mining Permit Application,
- Letter dated June 26, 2006, describing the Use Variance request and addressing the four state-mandated criteria for a Use Variance; and

WHEREAS, pursuant to Section 17.60.070 of the Town Municipal Code, the Planning Board is required to report its findings and recommendation to the Zoning Board of Appeals, and at its July 18, 2006 meeting recommended that the Zoning Board of Appeals perform the following:

- The Zoning Board of Appeals should request the applicant to conduct the technical studies necessary to determine the impacts to the area of special flood hazard,
- The Zoning Board of Appeals should request the applicant to conduct a more comprehensive study of vehicle traffic impacts to the existing traffic patterns on State Route 352, or that a report from a licensed professional engineer be submitted attesting to the applicant's claims; and

WHEREAS, Maureen Harding, Director of Planning, has submitted a Planning Staff Report dated July 12, 2006;

NOW, THEREFORE, BE IT RESOLVED that for environmental review purposes this is a Type I action pursuant to 6 NYCRR 617.4(b)(2), and this Board will do a coordinated review with notice sent to the following agencies:

Involved Agencies

- New York State Department of Transportation
- New York State Department of Environmental Conservation

Interested Agencies

- Chemung County Planning Board
- Chemung County Department of Health
- Big Flats Fire Department

FURTHER RESOLVED, that this Board finds that there is not sufficient technical information to complete a comprehensive review of this application; and

FURTHER RESOLVED, that the applicant shall submit a HEC-RAS study pursuant to Section 17.24.010(C) and Section 15.12.090(F) of the Town of Big Flats Municipal Code to determine any potential adverse impacts to the area of special flood hazard within the Conservation (C) District as per Section 17.60.040(B)(3); and

FURTHER RESOLVED, that the applicant shall submit a Traffic Impact Study pursuant to Section 17.36.040 (B)(2) to determine any potential adverse impact to the existing traffic patterns on State Route 352 within the Conservation (C) District as per Section 17.60.040(B)(3), or a report from a licensed professional engineer attesting to such; and

FURTHER RESOLVED, that this application is tabled pending receipt of the required documentation.

The question of the forgoing resolution was duly put to a vote as follows:

CARRIED:	AYES:	King, Rhodes, Williams, Seeley
	NAYS:	None
	ABSTAIN:	None
	ABSENT:	Rowe

Dated: Thursday, August 3, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

Since there was no further business to come before the Zoning Board of Appeals, the meeting was adjourned at 8:15 p.m.

MEMBERS COMMENTS:

- Rhodes asked if the Board was prepared to approve the By-Laws. Harding replied that Joe Rowe had some comments to submit. It was agreed to reschedule the By-Laws decision until the next Zoning Board of Appeals meeting which is scheduled for August 31, 2006
- Harding commented that the Zoning Board of Appeals might want to require details of Smith's transfer of property. The inherited property from a grandfather would be considered a purchase because he had the right to decline the offer. Therefore, a transfer would make it a self-created
- Harding added that the applicant could proceed in getting a mining permit; however, he is required to submit the same reports in order to get a mining permit.
- Rhodes asked Harding if the Conservation district has been considered for other uses. Harding replied that the intent is to preserve and utilize the district only for less intensive and

carefully considered development that is compatible with the sensitive nature of the land. Also, to ensure that the existing character, nature and benefits derived from such lands are preserved.

- Rhodes commented that farming was more profitable before the Conservation district was formed and that mining may be the only use to generate any money from that area. Harding commented that the Zoning Board might want to submit a recommendation for the zoning law amendment that has not been considered.
- Rhodes commented that if Smith goes out of farming, the property would grow into trees creating more of a flood hazard than a hole in the ground. Harding replied that Smith has to demonstrate in his studies that there would be no stream-based erosion.
- Harding stated that she would discuss this alternative suggestion with the Attorney for the Town. In the meantime, it would be a worthwhile consideration for the Zoning Board to respond to the zoning uses in the Conservation district.
- Seeley commented that he would like to know exactly where the entrance is proposed because it would be entering a 55+ mph traffic.
- Rhodes questioned if Smith put in a 25-acre pond, would he be able to sell the dirt that he removes. Harding replied that it would be a site plan issue.
- Rhodes commented that he has a problem with Smith claiming the property is unique. Harding replied that he would have to prove that his property is the only property that floods.
- Rhodes asked if mining traffic would be more acceptable on a secondary road.
- The Board discussed the problems observed with the County mining off Chambers Road. The mine seems to be below level and fill back in with water. Seeley asked who is monitoring that mine. Harding replied it is the NYS DEC's responsibility.
- Seeley asked for an update on the Roy Gravel Mining. He understood that it was closed down because they went too deep and asked who monitors the depth.
- Harding updated the Board that the NYS DEC is responsible for monitoring the depth of mining. She explained that the Roy mining was denied to expand the mining because the reclamation plan for a golf course was not an allowable use in that district. However, the proposed new zoning will allow this use, therefore, the applicant has resubmitted his application for expansion of this mining.
 - Roy mining is required to abide by the buffer and barrier laws and must place berms and screening.
 - The area that Roy's mine is on is being proposed as a Recreation Conservation District, whereas recreational uses such as golf courses would be allowed.
- Harding reminded the Board that the Roy application is not applying for a use variance. Seeley asked if the airport is mining off Chambers Road. Harding replied yes.
- The Board ended the meeting with a discussion about the pros and cons (poor gas mileage, hard to transport, more expensive to process) of Ethanol.

Date approved: _____

Nancy L. Van Maarseveen

**ZONING BOARD OF APPEALS
AUGUST 31, 2006**

**Town of Big Flats
Community Center
Conference Room "D"
7:00 P.M.**

A regular meeting of the Town of Big Flats Zoning Board of Appeals of the Town of Big Flats, Chemung County was held at the Big Flats Community Center in said Town of Big Flats on the 31st day of August 2006, at 7:00 p.m. The meeting was called to order by Thomas Rhodes, Chairperson and upon roll being called, the following were:

PRESENT: Thomas Rhodes, Chairperson
Don Williams
Harry King
Dick Seely
Joe Rowe

STAFF: Maureen Harding, Director of Planning

GUESTS: Ken & Kim Lorson

MINUTES:

Chairman Rhodes asked if there were any corrections before accepting and approving the minutes of August 3, 2006. Rhodes asked that the minutes be modified to reflect that the comments were made during the Public Hearing and that the Public Hearing for Mike Smith be worded to reflect that it would be continued when the requested information has been received and reviewed. Seely made a motion to accept and approve the minutes of August 3, 2006 with the recommended modifications, seconded by Williams. Roe abstained. King, Seely, Williams and Rhodes were in favor, motion carried.

Chairman Rhodes asked the Director of Planning the status of the Mike Smith mining variance application that is still pending for additional information. Maureen Harding, Director of Planning, reported that she has sent a formal letter to the New York State Department of Environmental Conservation (DEC) recommending that they be the Lead Agency in the SEQR process and has asked the applicant to move forward and apply for the mining permit. She reported that she has received a traffic analysis from the applicant's engineer which indicated no impact. However, the New York State DOT has requested further information.

It was agreed that when the information has been received and the SEQR coordination has been completed that the Zoning Board of Appeals would be informed and a meeting scheduled.

**PUBLIC HEARING
KEN LORSON/SUNOCO SERVICE STATION
AREA VARIANCES
TAX PARCEL #66.02-2-61**

Chair Rhodes called the Public Hearing to order at 7:03 P.M. He noted that the Public Hearing was duly published in the Elmira Star-Gazette and went on to describe the location, features, and purpose of this proposed variance. He further stated that the purpose of the Public Hearing was to receive public comments on the application that is the subject of this Public Hearing. Rhodes asked for comments from those present who wished to speak:

IN FAVOR: Ken Lorson, owner, commented that he has nothing more to add to the application and that he is available to answer any questions.

AGAINST: None

COMMENTS: Harding commented that this application is for an existing business property purchased from the previous owner. Because of the discontinued "use" as a Vehicle Repair and Filling Station for over a year, to begin operating the business again, the use is subject to site plan review. Additionally, since the existing lot and associated structures were constructed before the 1997 Zoning Law enacted at that time, in order to comply under the current sign law and bulk and density requirements of the Zoning Law, variances will be needed.

Rhodes requested that the record show that this Board has received a copy of the resolution from the Town Planning Board and a copy of comments from the County Planning Board that recommended approval subject to the satisfaction of the Town's area variance requirements.

Williams asked how long the business has existed on the property. Lorson replied he would guess twenty-plus years. Rhodes commented that the original variance for the Sunoco sign was granted on December 16, 1986. At the time of granting the variance for the gas pumps in 1984, buffers were not required under the Zoning Law.

Seely noted that there are no residential adjoining properties.

Williams inquired as to the type of service. Lorson replied that full service would be provided for several reasons.

Williams asked Lorson if he had inquired as to the cost of removing the gas island and changing the sign to comply with the new zoning laws. Lorson replied that he knows that the price to replace the gas pumps would be \$15,000 - \$20,000 each.

Seely asked Lorson if he had submitted the environmental requirements. Lorson replied that the Director of Planning has copies of the certifications of the tank bulk and storage certificates from the NYSDEC, which are required every five years.

Rhodes closed the Public Hearing at 7:15 P.M to reconvene the business portion of the regular meeting.

**RESOLUTION ZBA 17-2006
KEN LORSON/SUNOCO SERVICE STATION
AREA VARIANCES
TAX PARCEL #66.02-2-61**

Resolution by: Rowe
Seconded by: Seely

WHEREAS, this Board has received an application for two Area Variances from Ken Lorson for a motor vehicle filling station use on tax parcel #66.02-2-61 as shown on documents received July 24, 2006; and

WHEREAS, the property is located at 100 Canal Street in the Town Center (TC) district; and

WHEREAS, the Planning Board of the Town of Big Flats is reviewing this business for site plan approval, and the following do not comply with the current Big Flats Zoning Law:

- The fuel island totally encroaches the required 25' front buffer yard,
- The area of the face of the freestanding sign is 51 square feet, being 11 square feet larger than the maximum allowable area of 40 square feet; and

WHEREAS, the adjacent property owners have been notified of this application; and

WHEREAS, the Chemung County Planning Board, at its August 27, 2006 meeting, recommend approval subject to the satisfaction of the area variance requirements; and

WHEREAS, pursuant to Section 17.60.070 of the Town Municipal Code, the Planning Board of the Town of Big Flats, at its August 8, 2006 meeting, determined the following:

- There is no feasible way to make the existing fuel island comply with the current code requirements, and thereby recommends that the Zoning Board of Appeals grant the variance for the fuel island,
- The existing signage is acceptable and recommends the Zoning Board of Appeals grant the requested variances for signage; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat; and

WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and as such no further review is required; and

WHEREAS, after review, the Zoning Board has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by the granting of the area variance? No. The benefit of the granting of approval of the sign and area variances conferred to the owner will not adversely affect the character of the neighborhood because the pre-existing nature of the business.
2. Can the benefit/relief sought by the applicant be achieved by some method that will be feasible for the applicant to pursue but would not require a variance? To comply with the zoning law does present a practical difficulty in that the cost of relocating the fuel pumps to comply with the existing zoning code pursuant to the buffer requirements are infeasible for the owner to pursue due to the prohibitive cost and existing principal structure and lot layout.
3. Is the requested variance substantial? No.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? The variances requested will not substantially change the existing character of the area within which the business is located or affect the environmental conditions of the area due to its pre-existing nature.
5. Is the alleged difficulty self-created? Yes, but this does not preclude granting the requested variances.

NOW, THEREFORE, BE IT RESOLVED that the application for approval of the aforementioned variances of Sections 17.40.020 of the Zoning Law of the Town of Big Flats is hereby granted for the reasons stated above.

CARRIED: **AYES:** Seely, Williams, Rhodes, Rowe, King
NAYS: None
ABSTAIN: None
ABSENT: None

Dated: Thursday, August 31, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

RESOLUTION ZBA 18-2006
RULES AND PROCEDURES
TOWN OF BIG FLATS ZONING BOARD OF APPEALS

Resolution by: Rowe made the motion to grant the rules and procedures with the modifications
discussed and agreed.

Seconded by: King

THEREFORE BE IT RESOLVED that the following Rules and Procedures of the Town of Big Flats Zoning Board of Appeals, hereby known as the Rules and Bylaws of the ZBA, are made and accepted pursuant to Section 276 of Town Law of the State of New York as follows:

Section 1. General

- 1.1 The term *board* as used in these rules shall mean the duly appointed Zoning Board of Appeals of the Town of Big Flats.

Section 2. Officers and Duties

- 2.1 The officers of the board shall consist of a chairman and vice-chairman.
- 2.2 **Chairman.** The chairman shall be designated by the Town Board and preside at all meetings of the board. The chairman shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the board. The chairman shall appoint any committees found necessary to carry out the business of the board. The chairman may administer oaths and compel the attendance of witnesses as necessary to carry out the business of the board. The chairman's signature shall be the official signature of the board and shall appear on all decisions as directed by the board.
- 2.3 **Vice-Chairman.** A vice-chairman shall be designated by the board to serve in the absence of the chairman and shall have all the powers of the chairman during the chairman's absence, disability, or disqualification.
- 2.4 **Vacancies.** Should any vacancy on the board occur for any reason, the chairman shall give immediate notice thereof to the Town Clerk. Should designated vice chair vacancy occur among the board, the Town Board shall fill the vacancy as provided in Section 17.60.010 of the Town of Big Flats Zoning Law.

Section 3. Meetings

- 3.1 **Organizational Meeting.** The organizational meeting of the board shall be the first scheduled meeting at the beginning of the year or be determination of the Chair for a special meeting of the board. The purpose of this meeting shall be to orient new members, elections of vice chair and review of the by-laws.
- 3.2 **Regular Meetings.** The board shall meet on the last Thursday day of each month at 7:00 P.M. at the town offices, provided that there are applications pending or other business to conduct.
- 3.3 **Special Meetings.** The chairman shall call a meeting within 10 days of receipt of a written request from any three members of the board, which request shall specify the matters to be considered at such meeting. Meetings of the board may be called upon the initiative of the chairman. At least 48 hours notice of the time, place, and business of the meeting shall be given each member of the board, and proper public notice shall be given.
- 3.4 **Proceedings.** The order of business at meetings shall be as follows:
- (a) Roll Call
 - (b) Reading and approval of the minutes of the preceding meeting
 - (c) Action on held cases
 - (d) Public hearing (when scheduled)
 - (e) Other business
 - (f) Adjournment

Section 4. Voting

- 4.1 A quorum shall consist of three members.
- 4.2 No hearing or meeting of the board shall be held, nor any action taken, in the absence of a quorum; however, those members present shall be entitled to request the chairman to call a meeting for a subsequent date.
- 4.3 All matters shall be decided by a roll call vote. Decisions on any matter before the board shall require the affirmative vote of a majority as provided in Section 17.60.010 of the Town of Big Flats Zoning Law of the entire membership of the board unless otherwise specified herein.
- 4.4 A tie vote or favorable vote by a lesser number than the required majority shall be considered a denial of the application under consideration.
- 4.5 A member of the board shall recuse themselves, leave the room, and shall not vote on any matter in which he or she is personally or financially interested. Said member shall not be counted by the board in establishing the quorum for such matter.
- 4.6 No member shall vote on the determination of any matter requiring public hearing unless he or she has:
- (a) Attended the public hearing thereon, or
 - (b) Familiarized himself/herself with such matter by reading the record.

Section 5. Appeals and Procedures

- 5.1 **Interpretations--**An aggrieved party may request an interpretation of any element of the Zoning Code due to a decision by the Code Enforcement or Zoning Officer. The BOARD shall make a determination based on local practice, defined terms, intent, and any other considerations deemed necessary to make decision.
- 5.2 An appeal must be made within 60 days of the filing of an action of the Code Enforcement Officer. The applicant must file a notice of appeal with the Code Enforcement Officer or with

the chairman of the ZBA. Such notice shall be made on the form provided for that purpose. The Director of Planning, Code and Building Inspection, the Code Enforcement Officer and/or municipal clerk shall be responsible for providing any applicant with the proper forms and for instructing the parties concerned on the proper manner for completing and filing such forms. All information required thereon shall be complete before an appeal is considered.

5.3 ***Contents of Application***--The completed application form shall be accompanied by the following at minimum:

- (a) A drawing to scale showing any proposed or actual building footprints and setbacks with dimensions thereon,
- (b) A copy of the denial which was issued to the applicant that is being appealed, when applicable,
- (c) The prescribed filing fee as set from time to time by the town board,
- (d) A short Environmental Assessment Form (EAF) for Unlisted Actions or Full (FEAF) on Type I Actions (if applicable).
- (e) An application to the board shall be filed with the board secretary.
- (f) Director of Planning, Code & Bldg. Inspection or his/her designee shall determine whether a complete application has been submitted,
- (g) Director of Planning, Code & Bldg. Inspection or his/her designee shall identify any additional information which the board requires,
- (h) Director of Planning, Code & Bldg. Inspection or his/her designee shall refer the matter to any other involved or interested agencies,
- (i) Director of Planning, Code & Bldg. Inspection or his/her designee shall establish a Public Hearing date upon acceptance of a completed application.

5.4 ***Notification to abutting property owners***--The Secretary of the board shall notify in writing at a minimum all adjacent property owners at least 10 days prior to the board meeting.

5.5 ***Referral to Planning Board***--All applications for Use and Area Variances shall be immediately referred to the Planning Board for review and recommendation pursuant to Section 17.60.070 *Referral of planning board* of the Town of Big Flats Zoning Law. The recommendation shall be included with the documentation submitted for review by the board.

5.6 ***Conduct of the Meeting***--At the meeting with the applicant, the board shall discuss the following matters:

- (a) When a Public Hearing is held. Where the information is incomplete, or further information is requested, the board may hold open the public hearing and adjourn it until the following meeting for submission of such information,
- (b) The board shall review any additional information which has been submitted,
- (c) The board shall review all reports from the county planning agency or any other involved agency to which the application has been referred,
- (d) The board may consider whether or not to vote to approve or deny an application following the close of the public hearing. Such vote is not required to be made immediately upon closing the hearing, but must be made within 62 days of when the public hearing is closed as provided in Town Law Section 267-(a)(8).

5.7 ***Presence of the Applicant Mandatory***--No action shall be taken on any application unless the applicant, or the applicant's representative is present. The absence of the applicant or the applicant's representative may be deemed to be consent by the applicant to an extension of any time periods for review to the next regular meeting. The absence for two consecutive meetings may be deemed an abandonment of the application by the applicant, and the board may vote to deny based on the applicant's abandonment of the application.

Section 6. Hearings

- 6.1 ***Time of Hearing.*** The board shall schedule a hearing on all appeals or applications within a reasonable time of the filing of the appeal or application.
- 6.2 ***Notice of Hearing - Zoning Appeals.*** The Secretary of the board shall prepare a Public Hearing notice for publication in the official newspaper of the Town. In addition, the notice shall be posted on the Town website and on the Town bulletin board.
- 6.3 ***County Referral.*** Variances shall be referred to the county planning agency upon receipt. If within 30 days after receipt of a full statement of such referred matter, the planning agency to which referral is made, or an authorized agent of such agency, disapproves the proposal or recommends modification thereof, the board shall not act contrary to such disapproval or recommendation except by a vote of four members of the board, and after the adoption of a resolution fully setting forth the reasons for such contrary action. The chairman shall read the report of the county planning agency at the public hearing on the matter under review. If such a planning agency fails to report within 30 days, the board may act without such report.
- 6.3 ***Referrals to Adjacent Municipalities.*** NYS law (as of July 1, 2006) requires that a municipal board provide notice to an adjacent municipality when a public hearing will be held on certain planning and zoning actions that affect property within 500 feet of that adjacent municipality. This notice must be given by mail or electronic transmission to the municipal clerk of the abutting municipality at least ten days prior to a public hearing. The chart below identifies the actions subject to this requirement.

Required Referrals to Abutting Municipalities 10 Days Before Hearing
TYPE OF PLANNING/ZONING ACTION LOCATIONAL TRIGGER FOR REFERRAL

SPECIAL USE PERMIT	Affecting land within 500 feet of municipal boundary.
USE VARIANCE	Affecting land within 500 feet of municipal boundary.
SUBDIVISION PLAT	Affecting land within 500 feet of municipal boundary.
SITE PLAN	Affecting land within 500 feet of municipal boundary.
ZONING LAW OR MAP (Adoption or amendment)	Affecting land within 500 feet of municipal boundary.
OFFICIAL MAP (Adoption or amendment)	Affecting land within 500 feet of municipal boundary.
AREA VARIANCE	Not required.
COMPREHENSIVE PLAN Adoption or amendment	Not required.

- 6.5 ***Notice of Hearing to State Park Commission.*** The Secretary of the board shall mail notices of the hearing to the Regional State Park Commission having jurisdiction over any state park or parkways within 500 feet of the property affected by such appeal, at least five days prior to the hearing.

- 6.6 **Form of Notice.** Such notice shall state the location of the building or lot, the general nature of the question involved, the date, time, and place of the hearing, and the nature of the relief sought.
- 6.7 **Proceedings.** The order of business at a hearing shall be as follows:
- (a) Roll call
 - (b) The chairman shall give a statement of the case and read correspondence and reports received thereon. All aggrieved parties shall be heard.
 - (c) The applicant shall present his case.
 - (d) Those opposed shall present their arguments.
 - (e) Rebuttal by both sides
 - (f) Call for questions or comments by the board
 - (g) Additional cases
 - (h) Adjournment of hearings
 - (i) Call to order of regular meeting (when applicable)
- 6.8 **General Rules.** Any party may appear in person or by agent or by attorney.
- 6.9 The chairman may administer oaths and compel the attendance of witnesses.
- 6.10 **Rehearing.** Upon motion initiated by any member, and adopted by unanimous vote of the members present, the board shall review at a rehearing any order, decision, or determination of the board not previously reviewed. Upon such hearing--and provided that it shall appear that no vested rights due to reliance on the original order, decision, or determination will be prejudiced thereby--the board may, upon concurrence of all the members present, reverse, modify, or annul its original order, decision, or determination. An application for a rehearing may be made in the same manner as provided for the original hearing. The application for rehearing may be denied by the board if from the record it shall appear that there has been no substantial change in facts, evidence, or conditions.
- 6.11 **Consultants.** Should the board find it necessary during the review of an appeal to retain consulting services from engineers, architects, landscape architects, lawyers, planners, or other professional services for which the applicant shall be charged with payment, the applicant shall be notified in writing the amount of the estimated charges prior to the board retaining such services.

Section 7. Decisions

- 7.1 **Time of Decisions.** Decisions by the board shall be made not later than 62 days from the date of the final hearing as provided in Town Law. Such time may be extended by mutual consent of the applicant and the board.
- 7.2 **Form of Decisions.** The final decision on any matter before the board shall be made by written order signed by the chairman. Such decision shall state the findings of fact which were the basis for the board's determination. After such determination, the board may reverse or affirm, wholly or partly, or may modify the order or requirement of the Code Enforcement or Zoning Enforcement Officer. The decision shall also state any conditions and safeguards necessary to protect the public interest. The Board shall therefore:
- (a) Make resolution to approve the application as submitted, approve the application with modification, or deny the application. Such resolution must gain a majority vote to be approved. Applicable conditions may be applied to any approval of a Use or Area Variance.

- 7.3.1 **Basis for Decisions.** The board, in reaching said decision, shall be guided by standards specified in the zoning law as well as by community goals and policies as specified in the comprehensive plan, and by the findings of the board in each case.
- 7.4 **Findings - Contents.** The findings of the board and the supporting facts shall be presented regardless of whether it is based on evidence submitted or on the personal knowledge of the board. The board should show that:
- (a) It has made an intelligent review of the question;
 - (b) It has considered all of the information or evidence provided;
 - (c) It has heard all parties in question;
 - (d) Any intimate knowledge it has of the subject under question has been taken into account; and
 - (e) A personal inspection has been made by a member of the board and/or Town Department of Planning, Code and Building Inspection staff of the parcel in question and from this examination, certain findings were ascertained.
- 7.5 **Conflicts with Other Laws or Regulations.** In reviewing an application on any matter, the standards in any applicable local law or state statute shall take precedence over the standards of these rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.
- 7.6 **Decisions on Rehearing.** After a rehearing, other than one based on a substantial change in conditions, the original order may be changed only by a concurring vote of all the members then present, but not less than a majority of the board, and in conformance with Section 6.10 of these regulations.
- 7.7 **Filing of Decisions.** Decisions of the board shall be filed with the town clerk within five business days after the day such decision is rendered, and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the board.
- 7.8 **Notice of Decision.** Copies of the decision shall be mailed to the applicant, and the county planning agency when referral to the county planning agency is required in the particular case.
- 7.9 **Certification of Decision.** A certified copy of the board's decision, including all terms and conditions, shall be transmitted to the Code Enforcement Officer, and shall be binding upon and observed by him or her, and he or she shall fully incorporate such terms and conditions of the same in the permit to the applicant or appellant whenever a permit is authorized by the board.

Section 8. Adoption and Amendment of Rules and Regulations

- 8.1 **Adoption.** Upon adoption of these rules by the board, the chairman shall file a copy of these rules with the town clerk and they shall be a public record.
- 8.2 **Amendment.** These rules may be amended by an affirmative vote of not less than (4) members of the board, provided that such amendment be presented in written form at a meeting at which the vote was taken.
- 8.3 **Filing.** All amendments adopted shall be filed in the same manner as provided for in Section 8.1 above.

Section 9. Conflict of Interest

- 9.1 Any board member that has an interest in any application shall make such known to the Board during the public meeting. It shall be determined by the member whether such interest precludes the member from making a fair and honest assessment of the applicant's request. If

the member finds that he/she cannot make such an assessment, the member must refrain from voting and/or participation in review of the application.

CARRIED: **AYES:** King, Rowe, Rhodes, Williams, Seely
 NAYS: None
 ABSTAIN: None
 ABSENT: None

Dated: Thursday, August 31, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

Since there was no further business to come before the Zoning Board of Appeals, the meeting was adjourned at 8:35 p.m.

Date approved: _____ Nancy L. Van Maarseveen

**ZONING BOARD OF APPEALS
SEPTEMBER 28, 2006**

**Town of Big Flats
Community Center
Conference Room "D"
7:00 P.M.**

A regular meeting of the Town of Big Flats Zoning Board of Appeals of the Town of Big Flats, Chemung County was held at the Big Flats Community Center in said Town of Big Flats on the 28th day of September, at 7:00 p.m. The meeting was called to order by Thomas Rhodes, Chairperson and upon roll being called, the following were:

PRESENT: Thomas Rhodes, Chairperson
Don Williams
Harry King
Dick Seely

ABSENT: Joe Rowe

STAFF: Maureen Harding, Director of Planning
Thomas Reed II, Esq.

GUESTS: Dave Kost, Jim Taber, Adrian Van Maarseveen

MINUTES:

Chairman Rhodes asked if there were any corrections before accepting and approving the minutes of August 31, 2006. There being none, Seely made a motion to accept and approve the minutes of August 31, 2006, seconded by Williams. Rowe was absent. King, Seely, Williams and Rhodes were in favor, motion carried.

Chairman Rhodes called the hearing to order for the Zoning Board of Appeals interpretation of the Town Municipal Zoning Law pursuant Chapter 17.52 regarding the denial of a building permit to construct a 4' x 18' pole sign with an 3' x 10' LED message board.

Rhodes read an excerpt from the publication James A. Coon Local Government Technical Series: Guidelines for Applicants To the Zoning of Appeals (December 1999). "At the hearing, the ZBA will offer the applicant and/or applicant's representative the opportunity to present a case for relief. The applicant may personally testify, call witnesses, or submit written evidence, including drawings and graphics. Because an appeal is an adversarial proceeding, the ZBA will offer the municipality an equal opportunity to present its side of the case (the side which supports the enforcement officer's decision). Each side will be given an opportunity to question the other, or the other's witness. In addition, ZBA members may ask questions."

Rhodes then asked the applicant from Kost Tire Center to present their case.

**THE TIRE CENTER
SIGN CODE INTERPRETATION
TAX PARCEL #58.03-1-59**

CASE PRESENTED ON BEHALF OF THE APPLICANT	Jim Taber, representing Jack's Signs, stated that they are here to appeal the denial of the Building Permit.
	Rhodes replied that it is an appeal of the interpretation of the Town Code by the Code Enforcement Officer (CEO). The responsibility lies with the applicant to

convince the Zoning Board of Appeals (ZBA) that the interpretation was wrong.

Taber distributed an excerpt from the Town Municipal Code, Section 17.52.030, Part 7 that states, “Any *flashing sign* is prohibited.”

Taber referred to the definition of a flashing sign as an illuminated sign which is not stationary or constant in intensity and/or color and which rotates, oscillates, or varies faster than five cycles per minute. The sign proposed will be stationary and constant in intensity and color.

Taber continued that the second part of the definition of a flashing sign means an illuminated sign, which rotates or oscillates or varies faster than five cycles per minute is prohibited. Our proposed sign does not rotate, oscillate, or vary faster than 5 cycles per minute. Therefore, we feel that this sign is consistent with this definition.

Taber added that because a Porsche is made to go 100 mph, it does not speed because the laws provide speed limits that prevent the car from speeding. Therefore, just because a message board is intended to do something other than what we would like it to do, this does not mean that we would break the code and do it.

Taber explained that their interpretation is two-pronged. The words rotate, oscillate or vary are related to the rest of the sentence. It does not mean that flashing signs cannot rotate. What it states is “...which rotates or oscillates or varies faster than five cycles per minute.” What the applicant is requesting is that he be allowed to change the message only once a day.

Dave Kost, owner of Kost Tire Center, commented that realistically the sign is just going to be a signboard that is illuminated. It is designed so that the message can be changed electronically instead of manually. The intent is to change the message every night after closing at 7 p.m., in order to display a different advertised special message the next day.

Kost described the sign as follows:

- It will have a black border with red letters,
- It would not blink, rotate or oscillate. (It would stay within the definition of the Town Code),
- It would not scroll or flash,
- It would be a constant sign,
- It will not read the temperature like a bank.

Kost explained the reasons for this choice of sign:

- This sign would be easier to maintain.
- You do not have to change the message manually in cold weather for example the way gas stations signs are changed.

**CASE
PRESENTED
ON BEHALF OF
THE
MUNICIPALITY**

Maureen Harding, Director of Planning, Codes and Building Inspection explained that the reason that any flashing sign is prohibited townwide is because any flashing sign within the Town may present a traffic hazard. In our case here in the Town of Big Flats, it is also confusing to pilots and a hazard to aircraft flying over the Business Regional (BR) district.

Harding stated that the Town’s interpretation of the law is three-pronged. A sign will be found in violation of the code if an illuminated sign contains any of the

following variables:

1. Is not stationary or constant in intensity and/or color and rotates or
2. If it oscillates or
3. If it varies faster than five cycles per minute.

She added that the definition of rotating from the Merriam Webster's Dictionary states that to rotate means (1) to turn or cause to turn about an axis or a center revolved, (2) to alternate in a series.

Harding then read the definition of "oscillate" from the Merriam Webster's Dictionary as (1) to swing backwards and forward like a pendulum, (2) to move or travel back and forth between two points, and in the case of the Town's interpretation, (3) to vary or fluctuate. Therefore, it is the Town's position that a LED message board varies and that it rotates messages. The very intent of an electronic LED message board is to be able to change and vary the message.

DISCUSSION:

Seely commented that because the area is a high traffic area, the sign cannot scroll because it would distract motorists. Kost replied that as he stated previously, the message would not scroll. It would stay constant.

Rhodes explained that there is no difference between a lighted signboard (where the letters are changed manually) and this sign (where the letters would be changed electronically).

Rhodes commented that he does not see the distinction between gas station signs that are illuminated and the display of different messages and questioned why a gas station sign that changes its prices daily would not also be considered a sign that alternates in a series? He expressed his concern that a tight regulation could eliminate many signs now being used within the Town.

Thomas Reed III, Attorney for the Town, commented that the definition of an illuminated sign references electrical signs in the code.

Harding explained that it is not the message that we are trying to suppress, but the manner of the design, such as the constancy of the message and the constant intensity of color of the illumination. She further explained that the applicant has presented that the messages would not rotate on the sign. However, the LED message board has the ability to rotate its message. The Planning Department and the Code Enforcement Office considers this type of LED message board a flashing sign as it rotates, and it is not consistent in intensity and color. Even if it does not rotate and does not vary five cycles per second, the intent of the definition of a flashing sign in the Town Code is three parts. For example, if it is (1) not stationary or constant in intensity and/or color and rotates, (2) or if it oscillates, or (3) if it varies faster than five cycles per minute. This means that if any one of those variables is present in a sign that is illuminated, it is considered a flashing sign.

Seely noted that the code allows an illuminated sign and it is this Board's responsibility to interpret if this illuminated sign violates the code.

Rhodes asked Harding if it is the Town's position that this sign be prohibited because it has the potential to rotate even though the applicant has stated that their sign would not rotate. Harding replied that it is a fundamental aspect of an LED message board to rotate the message on the sign's surface.

Seely commented that it is his understanding that the applicant does not intend to have his sign scroll or flash. He stated that he just wants to have the ability to use the LED to change the message at night. The sign could be considered an illuminated sign with no flashing or scrolling. He suggested possibly an amendment to the sign law or grant conditional approval to the sign and that the Zoning Board further review this law.

Attorney Reed added that the Board is not granting a variance or any type of approval. The Board is just issuing an interpretation of the Town Code. There is good faith disagreement as to the interpretation of the Code. The Board's responsibility is to decide the difference of opinion between the Town's Planning Department and the applicant. A conditional approval is not the issue.

Harding reminded the Board that this interpretation would set precedence for any interpretation of flashing signs in the Town.

Rhodes concurred that the way the board applies the definition, it would have an impact on future signs and that the Board is not here to legislate. The matter is to interpret the legislation that already exists.

Seely commented that the applicant is required to prove that their sign meets the requirements of our Code.

Reed commented that the question before the Board is whether the sign as submitted and represented by the applicant meets that definition as the board interprets that definition. However, there is a presumption that the Planning Department interpretation is correct.

Williams commented that because the sign has the ability to rotate causes him concern that even with an agreement at this time, the agreement could be ignored in the future or even under different circumstances. He would prefer that the sign only be allowed one message.

Rhodes inquired about whether the Board is predicated the decision on the basis that the law may be broken in the future.

Kost added that the Town always has the ability to apply legal proceedings for the removal of the sign.

Reed advised the Board that whatever determination the Board makes would significantly set precedence for the Town. In the best-case scenario, you need to look as to what a reasonable person would consider the right answer. An illuminated sign may not have been a concern when the law was written.

Rhodes commented that now, he does not see anything in the ordinance that prohibits LED lighting. The applicant has submitted an application and in that application, he has represented to the Board that these are the conditions and details for this sign:

- That the dimensions would be 12 feet wide and 10 feet on the lower side;
- There will be a constant black background;
- With constant red letters;
- That the message would only be changed daily, after business hours, while the sign is not illuminated;
- No other color is utilized while sign is illuminated;

- The LED display millimeter standard is consistent while illuminated;
- There is one constant volume of light;
- Intensity of color stays constant while illuminated; and
- It is not animated.

Rhodes explained that based upon what has been represented by the applicant; it is now the responsibility of the Board to interpret the law and its intent.

Rhodes closed the public comment portion of the hearing.

**RESOLUTION ZBA 19-2006
KOST TIRE CENTER
DECISION OF THE ZONING BOARD OF APPEALS
TAX PARCEL #58.03-1-59**

Resolution by: Seeley
Seconded by: King

IN THE MATTER OF:

David Kost, owner of Kost Tire and Auto Care gave notice of appeal from the decision of the Zoning Enforcement Officer of the Town of Big Flats, in refusing to issue a permit for the proposed installation of an electronic LED Message Board Sign on tax parcel #58.03-1-59 located at the north side of County Route 64 east of Chambers Road in the Business Regional (BR) district on September 5, 2006. The denial was based upon the interpretation of the Town Code by the Town Planning Department that the subject sign was an unauthorized “flashing sign” as that term is defined under the Town Code and as prohibited by Town Code Section 17.52.030(A)(7). On this ground, the applicant seeks to challenge such interpretation by the Town and ultimately obtain the necessary building permit to install such sign; and

WHEREAS, said Board on the 28th day of September, 2006 held a public hearing on said appeal, at which hearing any and all persons interested in said appeal, were given the opportunity to appear and be heard thereon; and

WHEREAS, said Board has examined the application for the subject building permit and the aforesaid petition to the Zoning Board of Appeals for an interpretation of the Town Code relative thereto; and

NOW, THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals does hereby issue the following findings of facts and conclusions of law:

FINDINGS OF FACTS

Based upon the representations of the applicant, the evidence submitted by the applicant, the building permit application submitted as part of the record herein, the petition for an interpretation submitted by the applicant, the evidence submitted by the Town Planning Department and the testimony received at the September 28, 2006 public hearing held herein, the following findings of fact are hereby declared:

- The subject sign will at all times be stationary;
- The sign’s display area will always be constant in intensity and/or color;
- The sign will at all times consist of a black background and illuminated red letters that remain constant in intensity and color with no other colors being displayed on the sign at any time; and
- The sign does not rotate or revolve on the sign’s axis in any way;

- The sign's volume of light and overall brightness will at all times while the sign is in operation remain constant;
- The sign's message display will not change in any way during the course of the hours of operation of the underlying business for which the sign is being installed and shall remain continuously illuminated during such hours of operation;
- The sign shall only display such messages or advertisement that pertains to the business being operated on the parcel on which the sign is being installed;
- The sign at no time shall display any animated or similar type of displays; and
- The sign, either in the sign's physical construction or message display, will not oscillate or vary in any similar way.

CONCLUSION OF LAW

Based upon these findings of facts, and these facts only, the Zoning Board of Appeals hereby issues the following conclusion of law:

- The subject sign is not a "flashing sign" as that term is defined under Town Code Section 17.04.050.
- The subject sign is hereby determined to be an "illuminated sign" as such term is defined under Town Code Section 17.04.050.
- As an illuminated sign, the subject sign does not violate the prohibition concerning flashing signs as set forth under Town Code Section 17.52.030 (A)(7).
- As a result of this finding the interpretation of the Town Planning Department is hereby rejected and the applicant is hereby authorized to apply for a building permit to install the subject sign.

CARRIED:	AYES:	King, Rhodes, Seely
	NAYS:	Williams
	ABSTAIN:	None
	ABSENT:	Rowe

Dated: Thursday, September 28, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

Since there was no further business to come before the Zoning Board of Appeals, the meeting was adjourned at 8:35 p.m.

Date approved: _____ Nancy L. Van Maarseveen

**ZONING BOARD OF APPEALS
DECEMBER 28, 2006**

**Town of Big Flats
Community Center
Conference Room "D"
7:00 P.M.**

A regular meeting of the Town of Big Flats Zoning Board of Appeals of the Town of Big Flats, Chemung County was held at the Big Flats Community Center in said Town of Big Flats on the 28th day of December, at 7:00 p.m. The meeting was called to order by Thomas Rhodes, Chairperson and upon roll being called, the following were:

PRESENT: Thomas Rhodes, Chairperson
Don Williams
Harry King
Dick Seely

ABSENT: Joe Rowe

STAFF: Maureen Harding, Director of Planning
Sheree McGannon, Deputy Town Clerk

GUESTS: Richard Rossettie, Kent Brown

MINUTES:

Chairman Rhodes asked if there were any corrections before accepting and approving the minutes of September 28, 2006. Rhodes requested the word no be inserted into a statement he made on page 3, in the second paragraph under discussion of the September 28th minutes, Seely made a motion to accept and approve the minutes of September 28, 2006, seconded by Williams. All were in favor, except Rowe was absent, motion carried.

PUBLIC HEARING

**KENT BROWN REALTY GROUP/COUNTY ROUTE 64, INC. RE-SUBDIVISION
AREA VARIANCES
TAX PARCELS #58.03-1-56/58.03-1-58**

Chair Rhodes called the Public Hearing to order at 7:05 P.M. He noted that the Public Hearing was duly published in the Elmira Star-Gazette on December 20, 2006 and went on to describe the location, features, and purpose of the proposed area variances. He further stated that the purpose of the Public Hearing was to receive public comments on the application that is the subject of this Public Hearing. Rhodes asked for comments from those present who wished to speak:

IN FAVOR:

Richard Rossettie, representing the applicant stated the application set forth the rational and offered to answer any questions the Board might have.

Rhodes questioned how many parking spaces were being removed by the reconfiguration of the existing lot. Rossettie replied there are two things in motion; the reconfiguration of the existing

dealership property and the second is the merger of the additional seven feet frontage on County Rte 64. The net result is an increase from 214 to 242 spaces, which is a result of adding the additional property if that is approved. Rossettie stated he did not have the actual number of spaces that are removed by the shifting of the entrance and the engineer for the project could not be present but it is a substantial amount. The driveway inside the existing dealership property has to be completely reconfigured to direct traffic to the service end of the business, which is not visible from the proposed intersection. A wider aisle will run across the front taking away spaces.

Rhodes asked if the western boundary was being changed or blacktopped. Rossettie replied the boundary will be unchanged but additional blacktop will be added and the drainage area shortened and deepened. Rhodes asked if there were currently parking spaces on the east side of the building. Rossettie stated there is currently one row of parking spaces. Seely stated it appears vehicles will come in the new entrance and across the front of the lot to access the service area. He asked what the exit road on Fisherville Road was used for. Rossettie replied the Fisherville Road entrance is for delivery of cars.

Rhodes asked if the current layout conforms to the original site plan. Rossettie stated that it does and the front yard variance request is simply an easterly continuation of the original site plan.

Seely asked if there was a home on the land on the eastern side. Rossettie stated the co-applicant, County Route 64 Property, Inc. owns the property and the house is being demolished, the other applicant has made arrangements to lease and merge that property. Seely stated most the additional parking is located in this area. Rossettie confirmed that to be the case. Rhodes asked how the property came into existence, was it a lot by itself? Rossettie replied it was a residential lot.

Rhodes stated the applicant is proposing to go within 3 feet of the existing boundary and in the rear they are maintaining 25 feet.

Seely asked if the shared boundary for Kost Tire Service Center is blacktop. Rossettie replied the site plan calls for paving with a buffer of rock.

Rhodes directed a question to Maureen Harding regarding the Planning Board minutes of December 12, 2006, where it stated how many parking spaces per square feet were allowed. He asked for the significance. Harding explained this pertains to what the parking space restrictions are and the Planning Board can waive this restriction. As stated, it is simply a fact of the application.

Seely asked if any signs are being moved. Rossettie stated there were no sign applications submitted at this time.

King asked if the new entrance would be on the western side of the property. Rossettie stated the new drive would be shared with the Food Bank, eliminating a driveway on County Route 64. King stated with the closing of the separate entrances for both Kent Brown and the Food Bank a much safer entrance will be created.

Seely asked Maureen Harding if approval from any other agency is required for the changing of the retention pond and drainage. Harding replied the applicant submitted a Storm Water Management Plan Update to the one done in 1998.

Rhodes asked if the adjoining properties and those across the road all comply with the setback requirements. Harding stated she believed that they all comply.

AGAINST: None

COMMENTS: None

Rhodes closed the Public Hearing at 7:25 P.M to reconvene the business portion of the regular meeting.

DECISION ON KENT BROWN REALTY GROUP/COUNTY ROUTE 64, INC. AREA VARIANCES

TAX PARCELS #58.03-1-56/58.03-1-58

Chair Rhodes asked Maureen Harding, Director of Planning, to describe and review the Kent Brown/County Route 64, Inc. application. Referring to the Concept Drawing of the proposed action and the Planning Report she prepared for Board review, she described the applicant's request to merge parcels and increase lot coverage to incorporate additional parking spaces and traffic circulation into the service area, which will require variance of the Town Municipal Code. There was discussion at length regarding the Planning Report.

Rhodes asked if the applicant complies with the buffer setback requirements concerning the adjoining residential properties across the road. Harding stated that the applicant complies with the buffer requirements since the adjoining property across Fisherville Road is a restaurant, and not a residential use. She stated that she had investigated this to ensure that the applicant did in fact comply with the buffer requirement.

Rhodes asked Harding to explain why requiring the applicant to comply with the Bulk and Density schedule to the letter of the law would impair efficient traffic circulation. Harding explained that they would not have adequate traffic circulation if they complied with setback and buffer requirements. The applicant would lose parking spaces and the ability to have two-way traffic circulation for safety. Rhodes stated that by eliminating parking spaces they could comply.

Rhodes reviewed the recommendation from the Town of Big Flats Planning Board. The five criteria were discussed. There being no further questions or comments, Rhodes asked for a motion to adopt the resolution.

RESOLUTION ZBA 20-2006

KENT BROWN REALTY GROUP/COUNTY ROUTE 64, INC.

AREA VARIANCE

TAX PARCELS #58.03-1-56/58.03-1-58

Resolution by: Seely

Seconded by: Williams

WHEREAS, this Board has received an application from Kent Brown Realty Group and County Route 64, Inc., owners of tax parcels #58.03-1-56 and 58.03-1-58 requesting three area variances from the Town of Big Flats Zoning Law; and

WHEREAS, the property is located at 951 County Route 64 in the Business Regional (BR) district; and

WHEREAS, the current parcels are owned separately by Kent Brown Realty Group and County Route 64 Group; and

WHEREAS, the applicants propose to merge *Tax Parcels* 58.03-1-56 and 58.03-1-58 into one parcel under the ownership of both Kent Brown Realty Group and County Route 64 Group; and

WHEREAS *parcel* # 58.03-1-56 (3.201 acres) presently consists of the existing dealership and drainage swale and *parcel* #58.03-1-58 (0.692 acres) presently consists of a vacant parcel. The *re-subdivision* of these *parcels* will create one *parcel* containing approximately 3.893 acres; and

WHEREAS, the applicants propose to construct (26) additional impervious parking spaces for vehicle sales in addition to (216) existing parking spaces for a total of (242) parking spaces; and

WHEREAS, the addition of a new driveway entrance will require the closing of the existing driveway entrance to facilitate a shared driveway access to Kent Brown Toyota and the Food Bank (Tax Parcel #58.03-1-52.1) from the construction of a new 4-way signalized entrance to the recently constructed Target; and

WHEREAS, the Town Supervisor has received a letter dated November 14, 2006 from Murl Sebring, Chemung County Interim Commissioner of Public Works stating the following:

- The County's desire is to create a common access entrance for the Food Bank and Kent Brown Toyota and that the current entrance and driveways create confusion and potential safety problems;
- The completion of this safety project continues to be contingent on the cooperation of both the Food Bank and Kent Brown Toyota;
- The County has concurrence with the Food Bank and expect cooperation by Kent Brown Toyota; and
- The County is prepared to complete the construction in the spring of 2007; and

WHEREAS, the Director of Planning has received a letter dated December 14, 2006 from Murl Sebring, Chemung County Interim Commissioner of Public Works stating the concerns of the Chemung County Highway Department is as follows:

- The ability to create a common driveway for Kent Brown and the Food Bank at this traffic signal previously created by the Target development;
- The closure of the existing access point to both Kent Brown Toyota and to The Food Bank;
- That the plans as submitted appear to accomplish this;
- The traffic safety issues along CR 64 are a high priority; and

WHEREAS, the above described proposed action will require the following variance:

- **Lot Coverage** – Pursuant to Section 17.16.020 for *Individual General, Business or Industrial Use*, the maximum lot coverage allowed equals 70%. The applicant is requesting lot coverage of 80.9%; and

WHEREAS, the adjacent property owners have been notified of this application pursuant to the Rules of the Planning Board and the Zoning Board of Appeals; and

WHEREAS, this application has been referred to the Chemung County Planning Board pursuant to General Municipal Law 239-m as this property is located within 500 feet of County Route 64 and who stated at their meeting of December 14, 2006 that they are favorable to the applicants' current proposals, subject to any approval conditions the Town Planning Board deems warranted; and

WHEREAS, pursuant to Section 17.60.070 the Planning Board has reported its recommendation to the Zoning Board of Appeals pursuant to P82-2006:

1. Can the benefit be achieved by other means feasible to the applicant?
This particular parcel faces constraints and it is likely that anyone developing the property would have to request variances.
2. Will there be an undesirable change in the neighborhood character or to nearby properties?
The area around the applicant is residential and large expanses of parking lots; therefore, the additional parking spaces would not be detrimental to the character of the neighborhood.
3. Is the request substantial?
No. It is within 10 percent.
4. Will the request have adverse physical or environmental effects?
No.
5. Is the alleged difficulty self-created?
Yes. However, the benefits to the traffic circulation and safety outweigh the self-created hardship; and

WHEREAS, based on the above findings the Planning Board also determined that the granting of the requested variances would be consistent with the planning objectives of the Town Comprehensive Plan and recommends approval of the requests by the Zoning Board of Appeals; and

WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and as such no further review is required; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat; and

WHEREAS, after review, the Zoning Board has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

1. Can the benefit be achieved by other means feasible to the applicant?
Parking spaces could be eliminated, however improved traffic control is beneficial and the general layout is good.
2. Will there be an undesirable change in the neighborhood character or to nearby properties?
It is consistent in that it will not change the appearance of the neighborhood.
3. Is the request substantial?
Within the plan the request looks reasonable but does not seem to be consistent with the Comprehensive Plan of trying to maintain open space.
4. Will the request have adverse physical or environmental effects?

- It would not have an adverse effect or impact on the physical and environmental conditions of the neighborhood.
5. Is the alleged difficulty self-created?
Yes it is but the current traffic situation is unsafe; and

NOW, THEREFORE, BE IT RESOLVED that the application for approval of the aforementioned variance of Section 17.16.020 of the Zoning Law of the Town of Big Flats is hereby granted for the reasons stated above.

The question of the forgoing resolution was duly put to a vote as follows:

CARRIED: **AYES:** King, Seely, Williams, Rhodes
 NAYS: None
 ABSENT: Rowe

Dated: Thursday, December 28, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

RESOLUTION ZBA 21-2006
KENT BROWN REALTY GROUP/COUNTY ROUTE 64, INC.
AREA VARIANCE
TAX PARCELS #58.03-1-56/58.03-1-58

Resolution by: Williams
Seconded by: Seely

WHEREAS, this Board has received an application from Kent Brown Realty Group and County Route 64, Inc., owners of tax parcels #58.03-1-56 and 58.03-1-58 requesting three area variances from the Town of Big Flats Zoning Law; and

WHEREAS, the property is located at 951 County Route 64 in the Business Regional (BR) district; and

WHEREAS, the current parcels are owned separately by Kent Brown Realty Group and County Route 64 Group; and

WHEREAS, the applicants propose to merge *Tax Parcels* 58.03-1-56 and 58.03-1-58 into one parcel under the ownership of both Kent Brown Realty Group and County Route 64 Group; and

WHEREAS *parcel* # 58.03-1-56 (3.201 acres) presently consists of the existing dealership and drainage swale and *parcel* #58.03-1-58 (0.692 acres) presently consists of a vacant parcel. The *re-subdivision* of these *parcels* will create one *parcel* containing approximately 3.893 acres; and

WHEREAS, the applicants propose to construct (26) additional impervious parking spaces for vehicle sales in addition to (216) existing parking spaces for a total of (242) parking spaces; and

WHEREAS, the addition of a new driveway entrance will require the closing of the existing driveway entrance to facilitate a shared driveway access to Kent Brown Toyota and the Food Bank (Tax Parcel #58.03-1-52.1) from the construction of a new 4-way signalized entrance to the recently constructed Target; and

WHEREAS, the Town Supervisor has received a letter dated November 14, 2006 from Murl Sebring, Chemung County Interim Commissioner of Public Works stating the following:

- The County's desire is to create a common access entrance for the Food Bank and Kent Brown Toyota and that the current entrance and driveways create confusion and potential safety problems;
- The completion of this safety project continues to be contingent on the cooperation of both the Food Bank and Kent Brown Toyota;
- The County has concurrence with the Food Bank and expect cooperation by Kent Brown Toyota; and
- The County is prepared to complete the construction in the spring of 2007; and

WHEREAS, the Director of Planning has received a letter dated December 14, 2006 from Murl Sebring, Chemung County Interim Commissioner of Public Works stating the concerns of the Chemung County Highway Department is as follows:

- The ability to create a common driveway for Kent Brown and the Food Bank at this traffic signal previously created by the Target development;
- The closure of the existing access point to both Kent Brown Toyota and to The Food Bank;
- That the plans as submitted appear to accomplish this;
- The traffic safety issues along CR 64 are a high priority; and

WHEREAS, the above described proposed action will require the following variance:

- **Side Yard Setback/Buffer Yard Setback** – The required Buffer Yard is equivalent to the side yard setback of 15 feet pursuant to Section 17.36.200(D)(1). The applicant is requesting a variance of 12 feet on the east side of existing parcel number #58.03-1-58 to allow for parking within the *Buffer Yard* which is in variance to Section 17.36.200(D)(3); and

WHEREAS, the adjacent property owners have been notified of this application pursuant to the Rules of the Planning Board and the Zoning Board of Appeals; and

WHEREAS, this application has been referred to the Chemung County Planning Board pursuant to General Municipal Law 239-m as this property is located within 500 feet of County Route 64 and who stated at their meeting of December 14, 2006 that they are favorable to the applicants' current proposals, subject to any approval conditions the Town Planning Board deems warranted; and

WHEREAS, that pursuant to Section 17.60.070 the Planning Board has reported its recommendation to the Zoning Board of Appeals pursuant to P82-2006:

1. Can the benefit be achieved by other means feasible to the applicant?
This particular parcel faces constraints and it is likely that anyone developing the property would have to request variances.
2. Will there be an undesirable change in the neighborhood character or to nearby properties?

- The area around the applicant is residential and large expanses of parking lots; therefore, the additional parking spaces would not be detrimental to the character of the neighborhood.
3. Is the request substantial?
No. It is within 10 percent.
 4. Will the request have adverse physical or environmental effects?
No.
 5. Is the alleged difficulty self-created?
Yes. However, the benefits to the traffic circulation and safety outweigh the self-created hardship; and

WHEREAS, based on the above findings the Planning Board also determined that the granting of the requested variances would be consistent with the planning objectives of the Town Comprehensive Plan and recommends approval of the requests by the Zoning Board of Appeals; and

WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and as such no further review is required; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat; and

WHEREAS, after review, the Zoning Board has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

1. Can the benefit be achieved by other means feasible to the applicant?
Yes, they could eliminate a row of parking spaces, which results in slightly fewer parking spaces than are currently available.
2. Will there be an undesirable change in the neighborhood character or to nearby properties?
No, it is consistent with the area.
3. Is the request substantial?
Yes.
4. Will the request have adverse physical or environmental effects?
It would not have an adverse effect or impact on the physical and environmental conditions of the neighborhood.
Yes. However, the benefits to the traffic circulation and safety outweigh the self-created hardship; and

NOW, THEREFORE, BE IT RESOLVED that the application for approval of the aforementioned variance of Section 17.36.200(D)(3) of the Zoning Law of the Town of Big Flats is hereby granted for the reasons stated above.

The question of the forgoing resolution was duly put to a vote as follows:

CARRIED:	AYES:	King, Seely, Williams, Rhodes
	NAYS:	None
	ABSENT:	Rowe

Dated: Thursday, December 28, 2006

BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

RESOLUTION ZBA 22-2006
KENT BROWN REALTY GROUP/COUNTY ROUTE 64, INC.
AREA VARIANCE
TAX PARCELS #58.03-1-56/58.03-1-58

Resolution by: Williams
Seconded by: Seely

WHEREAS, this Board has received an application from Kent Brown Realty Group and County Route 64, Inc., owners of tax parcels #58.03-1-56 and 58.03-1-58 requesting three area variances from the Town of Big Flats Zoning Law; and

WHEREAS, the property is located at 951 County Route 64 in the Business Regional (BR) district; and

WHEREAS, the current parcels are owned separately by Kent Brown Realty Group and County Route 64 Group; and

WHEREAS, the applicants propose to merge *Tax Parcels* 58.03-1-56 and 58.03-1-58 into one parcel under the ownership of both Kent Brown Realty Group and County Route 64 Group; and

WHEREAS *parcel* # 58.03-1-56 (3.201 acres) presently consists of the existing dealership and drainage swale and *parcel* #58.03-1-58 (0.692 acres) presently consists of a vacant parcel. The *re-subdivision* of these *parcels* will create one *parcel* containing approximately 3.893 acres; and

WHEREAS, the applicants propose to construct (26) additional impervious parking spaces for vehicle sales in addition to (216) existing parking spaces for a total of (242) parking spaces; and

WHEREAS, the addition of a new driveway entrance will require the closing of the existing driveway entrance to facilitate a shared driveway access to Kent Brown Toyota and the Food Bank (Tax Parcel #58.03-1-52.1) from the construction of a new 4-way signalized entrance to the recently constructed Target; and

WHEREAS, the Town Supervisor has received a letter dated November 14, 2006 from Murl Sebring, Chemung County Interim Commissioner of Public Works stating the following:

- The County's desire is to create a common access entrance for the Food Bank and Kent Brown Toyota and that the current entrance and driveways create confusion and potential safety problems;
- The completion of this safety project continues to be contingent on the cooperation of both the Food Bank and Kent Brown Toyota;
- The County has concurrence with the Food Bank and expect cooperation by Kent Brown Toyota; and
- The County is prepared to complete the construction in the spring of 2007; and

WHEREAS, the Director of Planning has received a letter dated December 14, 2006 from Murl Sebring, Chemung County Interim Commissioner of Public Works stating the concerns of the Chemung County Highway Department is as follows:

- The ability to create a common driveway for Kent Brown and the Food Bank at this traffic signal previously created by the Target development;
- The closure of the existing access point to both Kent Brown Toyota and to The Food Bank;
- That the plans as submitted appear to accomplish this;
- The traffic safety issues along CR 64 are a high priority; and

WHEREAS, the above described proposed action will require the following variance:

- **Front Yard Setback/Buffer Yard Setback** – The applicant is requesting a variance of 14 feet of the 25 foot front yard setback requirement pursuant to Section 17.16.020 within front yard parallel to County Route 64 of existing parcel number #58.03-1-58 to allow for parking in the front yard setback which is also the buffer yard pursuant to Section 17.36.200. This is in variance to Section 17.36.200(D)(3); and

WHEREAS, the adjacent property owners have been notified of this application pursuant to the Rules of the Planning Board and the Zoning Board of Appeals; and

WHEREAS, this application has been referred to the Chemung County Planning Board pursuant to General Municipal Law 239-m as this property is located within 500 feet of County Route 64 and who stated at their meeting of December 14, 2006 that they are favorable to the applicants' current proposals, subject to any approval conditions the Town Planning Board deems warranted; and

WHEREAS, pursuant to Section 17.60.070 the Planning Board has reported its recommendation to the Zoning Board of Appeals pursuant to P82-2006:

1. Can the benefit be achieved by other means feasible to the applicant?
This particular parcel faces constraints and it is likely that anyone developing the property would have to request variances.
2. Will there be an undesirable change in the neighborhood character or to nearby properties?
The area around the applicant is residential and large expanses of parking lots; therefore, the additional parking spaces would not be detrimental to the character of the neighborhood.
3. Is the request substantial?
No. It is within 10 percent.
4. Will the request have adverse physical or environmental effects?
No.
5. Is the alleged difficulty self-created?
Yes. However, the benefits to the traffic circulation and safety outweigh the self-created hardship; and

WHEREAS, that based on the above findings the Planning Board also determined that the granting of the requested variances would be consistent with the planning objectives of the Town Comprehensive Plan and recommends approval of the requests by the Zoning Board of Appeals; and

WHEREAS, for environmental review purposes an Area Variance is a Type II action pursuant to 6NYCRR 617.5, and as such no further review is required; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed an application, held a public hearing and received comments thereat; and

WHEREAS, after review, the Zoning Board has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

1. Can the benefit be achieved by other means feasible to the applicant?
This would be consistent with what had already been approved.
2. Will there be an undesirable change in the neighborhood character or to nearby properties?
There will be no change.
3. Is the request substantial?
Yes, however it maintains the previously established guidelines set by the original site plan.
4. Will the request have adverse physical or environmental effects?
It would not have an adverse effect or impact on the physical and environmental conditions of the neighborhood.
5. Is the alleged difficulty self-created?
No, the request to move the driveway was made by the Town of Big Flats and Chemung County to alleviate traffic problems; and

NOW, THEREFORE, BE IT RESOLVED that the application for approval of the aforementioned variance of Section 17.16.020 and 17.36.200(D)(3) of the Zoning Law of the Town of Big Flats is hereby granted for the reasons stated.

The question of the forgoing resolution was duly put to a vote as follows:

CARRIED:	AYES:	King, Seely, Williams, Rhodes
	NAYS:	None
	ABSENT:	Rowe

Dated: Thursday, December 28, 2006
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

THOMAS RHODES
Chairman, Zoning Board of Appeals

MEMBERS COMMENTS:

Rhodes asked Harding if anymore work had been done on the definition of a flashing sign. Harding explained the issue would be revisited in the spring.

Maureen Harding, Director of Planning, provided the following updates:

- ✓ The new Planning Board and Zoning Board secretary, Brenda Belmonte will be starting on December 29th.

- ✓ The Zoning amendments will not be revisited until late spring.

Rhodes asked if the buffer and transition area limitations are realistic because a majority of the variances requested and granted have been in regards to these two issues. Harding replied that in the Hamlet the buffers and barriers do not match the existing conditions and that is where the new zoning amendments will allow some flexibility in the Town Center Overlay District

Harding commented that the Organizational Meeting for the Zoning Board of Appeals is scheduled for the end of January.

Rhodes asked if an alternate member would have to be present for every meeting. Harding replied that they would only be required to attend when needed but should be encouraged to attend as many meetings as possible even when not acting as a member.

Harding reported the Planning Board is holding a public hearing on January 2, 2007 and is set to vote on changing to a once a month meeting the first Tuesday of the month.

Seely asked if the Organizational meeting could be moved to an earlier date in January since he and King would both be absent for any meetings at the end of January. It was decided that the Organizational meeting be held January 11, 2007 at 7 p.m.

Since there was no further business to come before the Zoning Board of Appeals, the meeting was adjourned at 8:35 P.M.

Dated: Thursday, December 28, 2006
BIG FLATS, NEW YORK

Respectfully Submitted

Sheree McGannon
Deputy Town Clerk